

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF OHIO
3 WESTERN DIVISION

4 UNITED STATES OF AMERICA, - Docket No. 3:06-CR-719
5 Plaintiff, -
6 v. - Toledo, Ohio
7 - April 30, 2008
8 - Trial
9 -
10 MOHAMMAD ZAKI AMAWI, et al., -
11 Defendants. -
12 -----

13 VOLUME 41, TRANSCRIPT OF TRIAL
14 BEFORE THE HONORABLE JAMES G. CARR
15 UNITED STATES DISTRICT CHIEF JUDGE, AND A JURY

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24 produced by notereading.
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1 (Reconvened at 8:42 a.m.)

00:06:26 **2** THE COURT: Mr. Boss, about how long do you think
-08:-36:00 **3** this segment will take?

00:06:32 **4** MR. BOSS: Well, the actual tape is about 70-some
-08:-36:00 **5** minutes long, but I will be punctuating it with questions.

00:06:40 **6** THE COURT: So maybe an hour-and-a-half or so?

00:06:43 **7** MR. BOSS: I would imagine at least, yeah.

00:06:48 **8** THE COURT: We'll see how it goes. If it runs
-08:-36:00 **9** much longer than that, let us know.

00:06:54 **10** MR. BOSS: We're happy to take a break during the
-08:-36:00 **11** tape because it is quite long.

-08:-36:00 **12** THE COURT: Mr. Griffin, you remain under oath.

00:07:57 **13** Mr. Boss, you may resume.

-08:-36:00 **14** MR. BOSS: Thank you, Your Honor. Good morning,
00:08:00 **15** ladies and gentlemen. Mr. Griffin, good morning to you.

-08:-36:00 **16** THE WITNESS: Good morning.

-08:-36:00 **17** - - -

-08:-36:00 **18** DARREN GRIFFIN, CONTINUED CROSS-EXAMINATION

-08:-36:00 **19** BY MR. BOSS:

00:08:05 **20** **Q.** When we broke yesterday we were talking about October 8,
00:08:09 **21** 2004. That's when Mr. El-Hindi had told you: Don't train them
-08:-36:00 **22** for Jihad?

-08:-36:00 **23** MR. SOFER: Objection, Your Honor. Counsel keeps
-08:-36:00 **24** saying a certain line from the transcript. It's actually not

00:08:21 **25** exactly what the transcript says and I object to the

-08:-36:00 **1** characterization of what it is that Mr. El-Hindi said,

00:08:26 **2** especially when it's not accurate.

-08:-36:00 **3** THE COURT: Okay.

-08:-36:00 **4** BY MR. BOSS:

00:08:30 **5** Q. I'd like to skip ahead, and I'd like to direct your

-08:-36:00 **6** attention to that meeting at Mr. El-Hindi's house, the dinner

00:08:40 **7** meeting. Now, that was on February 16, 2005; you recall that?

-08:-36:00 **8** A. Yes, sir.

00:08:46 **9** Q. And we will be playing a videotape instead of the

-08:-36:00 **10** audiotape that the government reviewed with you. You've seen

-08:-36:00 **11** the videotape as well?

00:08:55 **12** A. Yes, I believe so.

-08:-36:00 **13** Q. Now, you told us in the direct examination that in

00:09:00 **14** preparation for your testimony, you spent a great deal of time

00:09:05 **15** reviewing each and every one of the recordings, not just once or

-08:-36:00 **16** twice, but at least about four times apiece; is that correct?

00:09:14 **17** A. Yes, sir.

-08:-36:00 **18** Q. How many times did you review the recording of the

-08:-36:00 **19** dinner meeting, if you recall?

00:09:19 **20** THE COURT: I didn't hear what you said.

00:09:21 **21** MR. BOSS: The meeting on February 16, 2005 at

-08:-36:00 **22** Mr. El-Hindi's house.

-08:-36:00 **23** A. The audio or the video?

-08:-36:00 **24** Q. Either one.

-08:-36:00 **25** A. I didn't keep track.

00:09:29 **1** Q. Numerous times?

00:09:31 **2** A. I believe so.

00:09:32 **3** Q. And you did that so that you could recall and accurately

-08:-36:00 **4** report what transpired on that day; isn't that correct?

-08:-36:00 **5** A. Yes, sir.

00:09:43 **6** Q. Now, before we begin playing the videotape, I'd like to

00:09:47 **7** ask a couple questions. Now, you on that date wore multiple

-08:-36:00 **8** recording devices; is that correct?

-08:-36:00 **9** A. I believe so, yes.

-08:-36:00 **10** Q. Can you tell us what they were? Not the name or

-08:-36:00 **11** anything, but one was an audio recording, and the other was a

00:10:02 **12** video, and so forth?

-08:-36:00 **13** A. Yes, sir.

00:10:07 **14** Q. And you reviewed the video in preparation for your

-08:-36:00 **15** direct testimony in addition to the audio; is that correct?

-08:-36:00 **16** A. I believe I reviewed the audio more than the video, but

-08:-36:00 **17** I did review the video also.

00:10:27 **18** Q. Now, the videotape does not start at the same time as

-08:-36:00 **19** the audiotape; it starts some period of time afterward; is that

00:10:38 **20** correct?

-08:-36:00 **21** A. If that's the case. I can't recall.

00:10:41 **22** Q. Do you recall turning the video recorder on after the

00:10:45 **23** audio had been recording for a while?

00:10:47 **24** A. Possibly because of the time restraints.

-08:-36:00 **25** Q. In fact, the recordings that were played, the audio

-08:-36:00 **1** recordings on February 16, 2005, began not at Mr. El-Hindi's
-08:-36:00 **2** house, if you recall, but they began earlier when you first met
00:11:08 **3** Mr. Amawi; is that correct?

-08:-36:00 **4** A. Yes, sir.

-08:-36:00 **5** Q. And then with Mr. Amawi you picked up the other
-08:-36:00 **6** co-defendant, Wassim Mazloun?

00:11:20 **7** A. I believe so.

00:11:22 **8** Q. And when you picked up Mr. Mazloun with Mr. Amawi, is it
-08:-36:00 **9** indeed your recollection that Mr. Wassim Mazloun thought that he
00:11:35 **10** was going to go shooting, practice shooting at Cleland's with
-08:-36:00 **11** you?

-08:-36:00 **12** A. I'm not -- as best as I can recall, it was just
-08:-36:00 **13** training, period. We didn't -- I didn't know if he meant
-08:-36:00 **14** shooting at Cleland's or training at the range.

-08:-36:00 **15** Q. Now, he didn't know that you had planned to take him to
-08:-36:00 **16** Mr. El-Hindi's house; isn't that correct?

00:11:56 **17** A. I don't know. I think it was Mr. Amawi's job to tell
00:12:02 **18** him what we were going to do.

00:12:04 **19** Q. You did not tell him that you were going to take him to
-08:-36:00 **20** Mr. El-Hindi's house; isn't that correct?

-08:-36:00 **21** A. Once he got in the car, yes.

-08:-36:00 **22** Q. Once he got in the car?

-08:-36:00 **23** A. Yes.

-08:-36:00 **24** Q. But not before then?

00:12:15 **25** A. I'd have to look at the -- listen to the audio.

-08:-36:00 **1** Q. In addition to that, Mr. El-Hindi, he had had his wife
00:12:26 **2** or his family prepare a dinner; is that correct?

00:12:31 **3** A. Yes, we ate.

-08:-36:00 **4** Q. So Mr. El-Hindi was expecting company?

-08:-36:00 **5** A. Yes, we told him we were coming over.

-08:-36:00 **6** Q. And Mr. El-Hindi was expecting company with the
00:12:41 **7** intention of having Mr. Amawi repair his computer which was
00:12:45 **8** having some difficulties; isn't that correct?

00:12:47 **9** MR. SOFER: Objection as to what Mr. El-Hindi
00:12:49 **10** intended.

-08:-36:00 **11** THE COURT: I would tend to agree, unless there's
00:12:53 **12** some basis for the statement.

-08:-36:00 **13** BY MR. BOSS:

-08:-36:00 **14** Q. Do you recall that Mr. Amawi forgot to bring an Arabic
00:13:04 **15** program to put on Mr. El-Hindi's computer?

00:13:07 **16** A. I believe Win-Rar.

00:13:15 **17** Q. That was the purpose for Mr. El-Hindi believing you were
00:13:19 **18** coming over, correct?

00:13:20 **19** A. I believe that's incorrect, sir.

00:13:23 **20** Q. Well, at any rate, there's an audio recording that

00:13:29 **21** starts quite some time, maybe about 22 minutes, before the video
-08:-36:00 **22** recording. Would that be about your recollection?

-08:-36:00 **23** A. I didn't subtract the time, sir.

-08:-36:00 **24** Q. But it's a substantial period of time?

00:13:42 **25** A. I would say possibly, yes.

00:13:45 **1** Q. Now, you've had some experience in the Middle East

-08:-36:00 **2** through your military service?

00:13:51 **3** A. Yes, sir.

00:13:52 **4** Q. And you've become somewhat familiar with parts of the
00:13:56 **5** Arab culture?

-08:-36:00 **6** A. Yes, sir.

00:13:58 **7** Q. Women in the Arab culture, particularly if we're talking
-08:-36:00 **8** about parts of Islam or parts of the faith, they cover their

00:14:10 **9** faces and most of their body with garb which I think are called

00:14:16 **10** hijabs or hijab?

-08:-36:00 **11** A. Hijab.

00:14:22 **12** Q. What other features are kind of unique to this culture

-08:-36:00 **13** in terms of separation of women from men?

00:14:29 **14** MR. SOFER: Objection to relevance, Your Honor.

-08:-36:00 **15** MR. BOSS: We'll establish that in a moment.

-08:-36:00 **16** THE COURT: I'll let you connect it up.

00:14:35 **17** A. It's actually not just culture; it's family opinion. So

-08:-36:00 **18** it depends on -- basically they go off the husband's beliefs,

-08:-36:00 **19** but basically you separate the women from the men, and a man

-08:-36:00 **20** that is not your husband or actual brother or family, they're

-08:-36:00 **21** not to be seen by other men.

00:14:57 **22** BY MR. BOSS:

00:14:57 **23** Q. Okay. And, in fact, when you go to the Mosque that you

-08:-36:00 **24** went to with Mr. El-Hindi, the women do come to worship; is that

-08:-36:00 **25** correct?

- 08:-36:00 **1** A. Yes.
- 00:15:08 **2** Q. But their area of worship is separated physically by a
- 08:-36:00 **3** wall from the area where the men worship?
- 08:-36:00 **4** A. Depending on what Mosque you're talking about, yes.
- 08:-36:00 **5** Q. Now, the dinner that you went to at Mr. El-Hindi's
- 00:15:23 **6** house, his wife was not seen by you while you were there; is
- 08:-36:00 **7** that correct?
- 08:-36:00 **8** A. Correct.
- 00:15:29 **9** Q. She remained in the kitchen at all times?
- 08:-36:00 **10** A. I don't know who was in the kitchen.
- 08:-36:00 **11** Q. You don't know who was in the kitchen? In fact, the
- 00:15:37 **12** kitchen layout or the floor plan layout, the kitchen is off of
- 08:-36:00 **13** the dining room separated by a door or a portal?
- 00:15:48 **14** A. Yes.
- 00:15:52 **15** Q. How many children does Mr. El-Hindi have, if you recall?
- 00:15:56 **16** A. Four or five.
- 00:15:59 **17** Q. Could be seven?
- 08:-36:00 **18** A. Could be.
- 00:16:02 **19** Q. Including a little baby?
- 08:-36:00 **20** A. Could be.
- 00:16:05 **21** Q. And those children were present at the time of this
- 08:-36:00 **22** meeting; is that correct?
- 00:16:09 **23** A. I believe so.
- 00:16:17 **24** Q. Another Arab tradition, I wonder if you recall hearing
- 08:-36:00 **25** about, has to do with whether or not a person -- whether it's

00:16:25 **1** rude to disagree with a guest while they're in your home. Do
-08:-36:00 **2** you recall hearing about that?

00:16:33 **3** **A.** No.

00:16:34 **4** **Q.** You don't recall Mr. Amawi even telling a story
00:16:38 **5** regarding he being with his father in Jordan and basically
00:16:43 **6** disagreeing with a house guest there and his father very, very
00:16:47 **7** aggressively putting him in his place? You don't recall Mr.
-08:-36:00 **8** Amawi telling you that?

-08:-36:00 **9** MR. SOFER: Objection, Your Honor, as to relevance.

00:16:53 **10** THE COURT: Overruled.

00:16:54 **11** MR. SOFER: May we approach?

00:16:54 **12** (Sidebar discussion sealed by order of the Court.)

00:21:38 **13** THE COURT: You may continue.

-08:-36:00 **14** Do you want to simply pose a further question?

-08:-36:00 **15** MR. BOSS: I'm not sure if there was an answer.

-08:-36:00 **16** THE COURT: Do you want it read back?

00:21:53 **17** MR. BOSS: I can probably restate it.

00:21:55 **18** BY MR. BOSS:

00:21:56 **19** **Q.** Mr. Griffin, do you recall hearing Mr. Amawi tell a
-08:-36:00 **20** story -- I think it was on February 2, 2005 -- about him being
-08:-36:00 **21** in his father's house in Jordan, him basically disagreeing
-08:-36:00 **22** rather vigorously with a house guest of his father, then his
00:22:12 **23** father vigorously reprimanding him for being so rude to a house
-08:-36:00 **24** guest in their house?

00:22:18 **25** **A.** Do you know what the topic was?

00:22:23 **1** THE COURT: I didn't hear your answer.

00:22:25 **2** THE WITNESS: I asked him if he knew what the topic

00:22:28 **3** was.

00:23:02 **4** MR. BOSS: Mr. Griffin, we'll get back to that.

00:23:06 **5** BY MR. BOSS:

00:23:06 **6** **Q.** Now, we're about to play this audio portion of which the

-08:-36:00 **7** jury's heard different parts from the government. They took a

-08:-36:00 **8** piece here and a piece there, which is appropriate, to avoid

-08:-36:00 **9** having a lot of --

00:23:19 **10** MR. SOFER: Objection, Your Honor. This is not a

-08:-36:00 **11** question. This is a speech.

00:23:22 **12** THE COURT: I would agree.

00:23:24 **13** BY MR. BOSS:

-08:-36:00 **14** **Q.** Mr. Griffin, we'll be playing a portion, but what I want

-08:-36:00 **15** to direct your attention to are a couple somewhat critical

-08:-36:00 **16** matters. During two particular clips that the government

-08:-36:00 **17** played, and I'll try to stop the tape and direct your attention

-08:-36:00 **18** to that, at one point you said in response to a question from

00:23:41 **19** Mr. Sofer that all three defendants were in the room, and all

-08:-36:00 **20** three of them had their attention on you. I believe at another

-08:-36:00 **21** point you indicated that the children were about to bring the

-08:-36:00 **22** food out. And at another point you indicated that books were

00:24:00 **23** passed around to all three defendants or shown to the three

00:24:03 **24** defendants. Now, when we get to that point, I want you to pay

-08:-36:00 **25** attention because I'm going to stop the tape and ask you some

-08:-36:00 **1** questions. I also want you to pay attention to who appears to
00:24:17 **2** be dominating the conversations, okay?

00:24:23 **3** MR. BOSS: Mr. Hess, I would like you to, if you

-08:-36:00 **4** would, please, play ID-29 from February 16, 2005, the videotape
-08:-36:00 **5** from case 69185. Are you prepared to do so?

00:24:52 **6** Mr. Hartman will try to get your attention when
-08:-36:00 **7** it's time stop.

00:25:05 **8** Is everyone ready?

00:25:09 **9** (Video played.).

00:26:13 **10** BY MR. BOSS:

00:26:14 **11** **Q.** Mr. Griffin, at this point you started to say you wanted

-08:-36:00 **12** to talk about training and tactics, but the other gentlemen in

-08:-36:00 **13** the room -- and would that be the three co-defendants -- were

-08:-36:00 **14** not paying attention to you, were they?

00:26:30 **15** MR. SOFER: Objection.

00:26:34 **16** THE COURT: If he can recall, he can respond.

00:26:38 **17** BY MR. BOSS:

00:26:38 **18** **Q.** They were talking about matters other than what you just

-08:-36:00 **19** brought up about: Well, my brothers, we can talk about training

-08:-36:00 **20** or we can train. They did not respond to that at that point,

-08:-36:00 **21** did they?

00:26:51 **22** **A.** Yes, I think I made a cultural SNAFU at that point.

00:26:56 **23** **Q.** In fact, Mr. El-Hindi is seen in this frame here with a

00:27:00 **24** baby on his shoulder; do you recall that?

00:27:03 **25** **A.** Yes.

-08:-36:00 **1** Q. And who was sitting -- there's a couch that is off to
-08:-36:00 **2** the left of our frame. Who was sitting at what point on the
-08:-36:00 **3** couch, if you recall?

-08:-36:00 **4** A. That is Wassim Mazloun on the far right of the couch,
-08:-36:00 **5** and I believe in between or sitting next to him is Marwan's son,
00:27:26 **6** Othman.

00:27:26 **7** Q. Then Mr. Amawi is sitting on the left corner, is it?
-08:-36:00 **8** We'll see it in a minute.

00:27:32 **9** But anyway, the two other co-defendants other than
-08:-36:00 **10** Mr. El-Hindi are sitting on the corners of the couch?

00:27:37 **11** A. Yes, sir.

-08:-36:00 **12** Q. And they're playing with Mr. El-Hindi's children; we can
00:27:41 **13** hear some commotion of children in the background, right?

-08:-36:00 **14** A. Yes, sir.

-08:-36:00 **15** Q. Now, shortly after this, you bring up out of the blue a
00:27:52 **16** rather lengthy explanation, and I want to ask you after you hear

-08:-36:00 **17** it if it sounds to you like you're gathering information or

00:28:04 **18** whether you are seizing the opportunity to form your own cell,

-08:-36:00 **19** okay. So let's listen to it.

-08:-36:00 **20** (Video played.)

00:30:54 **21** BY MR. BOSS:

-08:-36:00 **22** Q. Now, it will be continuing, of course, but I have a

-08:-36:00 **23** couple questions about that first segment. First, you brought

-08:-36:00 **24** up that matter out of the blue when the others were just having

-08:-36:00 **25** casual conversation for some 20 minutes before that; isn't that

-08:-36:00 **1** correct?

00:31:09 **2** **A.** Yes and no.

00:31:10 **3** **Q.** And you indicated in the middle of that passage: Just

-08:-36:00 **4** like you guys have asked me, you know, you've asked me for

-08:-36:00 **5** training.

-08:-36:00 **6** Now, Marwan El-Hindi didn't ask you for training,

-08:-36:00 **7** did he?

00:31:23 **8** **A.** Yes, he did.

00:31:24 **9** **Q.** On what day?

00:31:28 **10** **A.** It's in the tapes, at least on the one you played

-08:-36:00 **11** yesterday at the ICNA conference where he stated: I want to

-08:-36:00 **12** train, too.

00:31:39 **13** **Q.** You knew at that time he was referring to physical

00:31:42 **14** fitness, wasn't he?

-08:-36:00 **15** **A.** To my understanding, I thought he was training for

-08:-36:00 **16** Jihad.

00:31:48 **17** **Q.** Now, when you said: We'll train for Jihad, God willing,

00:31:52 **18** we'll cloak it with my security company. That was your idea,

-08:-36:00 **19** wasn't it?

-08:-36:00 **20** **A.** Yes.

00:31:59 **21** MR. BOSS: We can continue, please.

-08:-36:00 **22** (Video played.)

00:33:12 **23** BY MR. BOSS:

-08:-36:00 **24** **Q.** Now, Mr. Griffin, did you notice on the video

-08:-36:00 **25** Mr. El-Hindi get up from the chair?

- 00:33:20 **1** A. Yes.
- 08:-36:00 **2** Q. What did he do?
- 08:-36:00 **3** A. Took two steps and received the tea from -- I believe it
- 08:-36:00 **4** was one of his daughters.
- 08:-36:00 **5** Q. You saw one of his daughters there at the house?
- 08:-36:00 **6** A. It's permissible to see the daughters if they're, you
- 00:33:34 **7** know, not of adolescent age.
- 00:33:38 **8** Q. Is that the only time that he got up and went to the
- 08:-36:00 **9** kitchen?
- 08:-36:00 **10** A. I don't know, but he didn't go into the kitchen. Like
- 08:-36:00 **11** you said, there's an archway right there covered with a blanket,
- 08:-36:00 **12** and he received the tea from there.
- 00:33:53 **13** Q. Now, you've watched the tape a few times, I believe,
- 08:-36:00 **14** before, right?
- 08:-36:00 **15** A. Yes.
- 00:33:58 **16** Q. And you listened to the audiotape many times?
- 08:-36:00 **17** A. Yes.
- 00:34:02 **18** Q. And you know that if a person isn't participating in a
- 00:34:06 **19** conversation, but we're only listening to the audiotape, you
- 08:-36:00 **20** can't tell whether they're present or not or just being quiet,
- 08:-36:00 **21** correct?
- 00:34:16 **22** A. Just listening to the audio?
- 08:-36:00 **23** Q. Yes.
- 08:-36:00 **24** A. Uh-huh.
- 08:-36:00 **25** Q. But on a videotape you may be able to tell; isn't that

- 08:-36:00 **1** correct?
- 00:34:23 **2** **A.** Correct.
- 00:34:24 **3** **Q.** Is this the only time Mr. El-Hindi left this room during
- 08:-36:00 **4** this process, during this dinner meeting?
- 08:-36:00 **5** **A.** I can't recall. Let's look at it.
- 00:34:33 **6** MR. BOSS: Let's continue the tape.
- 00:34:37 **7** (Video played.).
- 00:37:02 **8** BY MR. BOSS:
- 08:-36:00 **9** **Q.** Now, Mr. Griffin, in that last passage when you were
- 00:37:06 **10** describing where people might go and so forth, you said about
- 00:37:11 **11** Marwan: And, you know, Brother Marwan, maybe you'll want to go
- 08:-36:00 **12** to Palestine.
- 08:-36:00 **13** You used the word "maybe", didn't you?
- 00:37:21 **14** **A.** What's that?
- 08:-36:00 **15** **Q.** You didn't say: Marwan, you said you wanted to go? It
- 08:-36:00 **16** was your idea? Brother Marwan, maybe you want to go to
- 00:37:29 **17** Palestine. Those are two different things, aren't they?
- 08:-36:00 **18** **A.** Go to Palestine maybe, whatever was played right there.
- 08:-36:00 **19** **Q.** Marwan El-Hindi didn't say: Yes, I do; I want to go to
- 08:-36:00 **20** Palestine? He didn't say that, did he?
- 08:-36:00 **21** **A.** From prior discussions and everything else, once again,
- 08:-36:00 **22** that's what I had gathered in the past.
- 00:37:50 **23** **Q.** Were those prior discussions recorded?
- 08:-36:00 **24** **A.** Possibly some.
- 00:37:54 **25** **Q.** What day was Marwan El-Hindi recorded to say he wanted

-08:-36:00 **1** to go to Palestine to fight?

-08:-36:00 **2** **A.** I can't recall. But I didn't pull Palestine from out
-08:-36:00 **3** of the sky.

00:38:10 **4** **Q.** Now, you were asking for more brothers to reinforce
00:38:14 **5** that. You were creating the cell; isn't that correct?

00:38:17 **6** **A.** Yes.

00:38:23 **7** **Q.** And after you said about going different places, a joke
-08:-36:00 **8** was told about Toledo; is that correct?

-08:-36:00 **9** **A.** Yes. Somebody had said Toledo.

00:38:33 **10** **Q.** But you know that there was no fighting to be held in
-08:-36:00 **11** Toledo, correct?

00:38:40 **12** **A.** Yes.

00:38:42 **13** MR. BOSS: Please continue.

00:38:45 **14** (Video played.)

00:40:05 **15** BY MR. BOSS:

00:40:06 **16** **Q.** Now, Mr. Griffin, when you indicated that you were
-08:-36:00 **17** training them to be trainers, and then you can do your cell,

-08:-36:00 **18** your own cell, this was your cell here, and you were suggesting
-08:-36:00 **19** that they might create their own elsewhere; is that correct?

-08:-36:00 **20** **A.** Yes.

00:40:36 **21** (Video played.)

00:42:31 **22** BY MR. BOSS:

-08:-36:00 **23** **Q.** When you say everything's legit, does that mean
00:42:39 **24** legitimate?

00:42:41 **25** **A.** Yes.

-08:-36:00 **1** Q. Were you trying to camouflage that this was illegal?

-08:-36:00 **2** A. The portion about the training -- the intent and purpose

-08:-36:00 **3** of the training, yes.

00:42:51 **4** Q. And you were telling the defendants that what you were

-08:-36:00 **5** going to be doing with them was legal?

00:42:57 **6** A. I stated earlier in this block that training for Jihad,

00:43:03 **7** yes.

00:44:32 **8** (Video played.).

00:44:35 **9** BY MR. BOSS:

-08:-36:00 **10** Q. Now, Marwan El-Hindi at that point is not an active

00:44:38 **11** participant in this conversation, is he? He hasn't said two

00:44:42 **12** words here?

00:44:43 **13** A. But he's clearly focused on me.

-08:-36:00 **14** Q. Okay. He didn't take that book from you, did he?

-08:-36:00 **15** A. I didn't hand him the book.

-08:-36:00 **16** Q. You didn't offer it to him just then?

-08:-36:00 **17** A. I just held it up.

00:44:55 **18** Q. You were just displaying it to him?

00:44:57 **19** A. I was holding it up right here because I was talking

00:45:00 **20** about insurgencies, and if you can remember back to the front of

00:45:03 **21** that book, it talks about insurgencies, counter-insurgencies.

00:45:10 **22** MR. BOSS: Could we replay that just a few frames

-08:-36:00 **23** and take a look at that.

-08:-36:00 **24** (Video played.).

00:45:45 **25** BY MR. BOSS:

-08:-36:00 **1** Q. Now, those books that you brought, they weren't used at
-08:-36:00 **2** any time at this meeting for any training purpose at all, were
-08:-36:00 **3** they?

00:45:54 **4** A. No, sir.

00:45:55 **5** Q. As a matter of fact, this movie -- and you know you're
-08:-36:00 **6** making a movie here, a video?

-08:-36:00 **7** A. Video, okay.

-08:-36:00 **8** Q. Did you bring them as props so that there would be some
-08:-36:00 **9** prop in the movie?

-08:-36:00 **10** A. No. I did it because of my credibility.

00:46:21 **11** Q. Marwan El-Hindi did not take the book from you, did he?

-08:-36:00 **12** A. I can't recall. He didn't take that book.

00:46:31 **13** MR. HARTMAN: Judge, may we approach?

00:46:33 **14** (Whereupon the following discussion was had at the
00:50:59 **15** bench outside the hearing of the jury:)

00:50:59 **16** MR. HARTMAN: There have been several occasions

-08:-36:00 **17** where we've asked about who was paying attention and whatnot and

-08:-36:00 **18** who wasn't paying attention, and the government's objected, and

-08:-36:00 **19** the objection's been sustained. And Griffin just snuck in the

-08:-36:00 **20** fact that: No, because he was paying attention to me. I'd

-08:-36:00 **21** like an instruction to the jury that he can't tell them what

-08:-36:00 **22** Griffin was paying attention to.

-08:-36:00 **23** MR. SOFER: He was asked, like, five times that

-08:-36:00 **24** question.

-08:-36:00 **25** THE COURT: I think the answer, which you are

-08:-36:00 **1** making an objection to now, somewhat late, was he was focused on
-08:-36:00 **2** me. Well, had there been an objection, I would have sustained
-08:-36:00 **3** it, but there wasn't.

-08:-36:00 **4** MR. HARTMAN: Okay.

-08:-36:00 **5** MR. SOFER: I don't understand this. I'm
-08:-36:00 **6** mystified about this.

-08:-36:00 **7** THE COURT: I agree. He cannot testify whether
-08:-36:00 **8** somebody was paying attention. He can ask him where was he?
-08:-36:00 **9** What was he doing? What do you recall? Did he say anything?
-08:-36:00 **10** That's fine.

-08:-36:00 **11** MR. SOFER: I'm sorry, Judge. I don't mean to
-08:-36:00 **12** be -- I think if we read the record back, when I have objected
-08:-36:00 **13** to that, Your Honor has not sustained those objections largely.
-08:-36:00 **14** The question that was -- when the government has objected to
-08:-36:00 **15** that, Your Honor has not sustained those objections. You've
-08:-36:00 **16** allowed him to ask other questions about, for instance: Was he
-08:-36:00 **17** looking at you? When he says he was focused on me, that's as
-08:-36:00 **18** close as you can get to an example of -- when someone says
-08:-36:00 **19** they're focused on me, I think what he's saying is he was
-08:-36:00 **20** looking at me. I think that's clear from the tape.

-08:-36:00 **21** THE COURT: But someone, quote, paying attention.
-08:-36:00 **22** I believe when there's been an objection to something that would
-08:-36:00 **23** be his testimony about what's on somebody else's mind, I think
-08:-36:00 **24** I've sustained that.

-08:-36:00 **25** MR. SOFER: Sometimes, Your Honor. Again, what I

-08:-36:00 **1** would -- it just has to be one way or the other. Either they

-08:-36:00 **2** shouldn't ask these questions or they can't object to --

-08:-36:00 **3** THE COURT: I agree, you cannot ask: What did he

-08:-36:00 **4** want to do? Something that reflects the other person's state of

-08:-36:00 **5** mind in a conclusory fashion is not proper. You can, however,

-08:-36:00 **6** ask what you observed, and the jury can draw an inference from

-08:-36:00 **7** that. If somebody's sitting there playing with a baby, and

-08:-36:00 **8** then you can argue he was playing with a baby. You can't say,

-08:-36:00 **9** was he paying attention to you in a conclusory manner. You can

-08:-36:00 **10** establish the factual predicate from which you can argue the

-08:-36:00 **11** inference. And I think I've been pretty consistent in that.

-08:-36:00 **12** Because if I haven't, then I haven't been paying attention,

-08:-36:00 **13** because that's a fundamental proposition.

-08:-36:00 **14** MR. SOFER: All I'm saying, Judge, is of all the

-08:-36:00 **15** things to object to, I think when the witness said he was

-08:-36:00 **16** focused on me, to me, at least, that indicates some observation

-08:-36:00 **17** about an actual physical thing as opposed to reading someone's

-08:-36:00 **18** mind.

-08:-36:00 **19** MR. HARTMAN: The question that was asked was: He

-08:-36:00 **20** didn't say two words? And the answer was: He was paying

-08:-36:00 **21** attention to me.

-08:-36:00 **22** THE COURT: Then it's up to the cross-examiner to

-08:-36:00 **23** say: Just a moment; Move to strike. I will strike that. The

-08:-36:00 **24** cross-examiner says: He didn't say two words. Then trust me,

-08:-36:00 **25** I'll make real clear to any witness, you don't ad lib. You

-08:-36:00 **1** answer the questions. The cross-examiner's job is to ask a
-08:-36:00 **2** single fact question, a yes or no answer. If the cross-examiner
-08:-36:00 **3** doesn't do that, I'm not going to interject. And I'm not going
-08:-36:00 **4** to interject on my own unless the witness runs all over the
-08:-36:00 **5** field and the cross-examiner isn't paying attention. Even then
-08:-36:00 **6** I may not. It's up to the cross-examiner.
-08:-36:00 **7** (End of side-bar discussion.)
-08:-36:00 **8** THE COURT: You may resume.
-08:-36:00 **9** MR. BOSS: Thank you, Judge.
00:51:26 **10** May I have just a moment, please?
-08:-36:00 **11** (Discussion had off the record.)
00:53:00 **12** MR. BOSS: Mr. Hess, if you would, please, after we
-08:-36:00 **13** get them on. Thank you. I'm so sorry. Can you go back to
00:53:12 **14** just a couple moments before? Is everyone ready?
00:53:18 **15** Go ahead, Mr. Hess.
00:53:20 **16** (Video played.).
00:53:51 **17** BY MR. BOSS:
00:53:52 **18** **Q.** Now, you're the one who's talking about going over to
00:53:55 **19** Iraq. You said: If we are. You're the one who's deciding
00:54:00 **20** about going overseas and so forth, is that correct, in this
00:54:04 **21** instance?
00:54:06 **22** **A.** I made that statement. But as far as suggestions, I
00:54:15 **23** already identified what's happened prior to this.
-08:-36:00 **24** **Q.** You're designing an operational plan, you indicate;
00:54:21 **25** isn't that correct?

-08:-36:00 **1** A. Yes.

00:54:23 **2** MR. BOSS: Go ahead.

00:54:28 **3** (Video played.).

00:55:55 **4** BY MR. BOSS:

-08:-36:00 **5** Q. Now, do you remember in your direct examination a

-08:-36:00 **6** question being asked of you by the prosecuting attorney about

-08:-36:00 **7** who was in the room at this point in time?

-08:-36:00 **8** A. Yes, I do.

-08:-36:00 **9** Q. And do you remember your answer to that question?

00:56:10 **10** A. I believe I said everyone.

-08:-36:00 **11** Q. And do you remember telling us, ladies and gentlemen of

00:56:18 **12** the jury, where the defendant's attention was focused?

-08:-36:00 **13** A. Yes, I believe I said on me.

-08:-36:00 **14** Q. By the way, the screen is blank here. Do you have an

-08:-36:00 **15** explanation for why that is?

-08:-36:00 **16** A. Part of my clothing.

-08:-36:00 **17** Q. Was covering the camera lens?

-08:-36:00 **18** A. I guess, yes.

00:56:41 **19** MR. BOSS: Go ahead.

00:56:42 **20** (Video played.).

00:58:31 **21** MR. BOSS: Mr. Hess, are you able to go back frame

-08:-36:00 **22** by frame over the last few frames or no? Take it back a few

-08:-36:00 **23** frames, and let's take it forward. Let's see if we see anyone

-08:-36:00 **24** in the chair where Mr. El-Hindi had been occupying.

00:59:50 **25** (Video played.)

00:59:50 **1** MR. BOSS: Stop. Go back a moment, then forward
-08:-36:00 **2** it. If you can freeze frame on that couch that appeared.
01:00:08 **3** BY MR. BOSS:
01:00:09 **4** Q. Can you tell me when Mr. El-Hindi left the room?
01:00:13 **5** A. It looked like -- remember when you instructed your guy
-08:-36:00 **6** to go back there to that one flash? He was sitting there. And
-08:-36:00 **7** then you notice on the table right here, that corner right
-08:-36:00 **8** there, there's something missing that was put there, a cup.
01:00:28 **9** Well, it's gone. He just picked that cup up, and it should be
01:00:33 **10** -- he's standing right there at the kitchen entrance.
01:00:38 **11** Q. And when he's standing at the kitchen entrance, is he
01:00:42 **12** engaged with the people in the kitchen? Is he looking in the
-08:-36:00 **13** kitchen or talking to them and playing with the children?
01:00:48 **14** A. I'm focused on the conversation at this point, so you'd
-08:-36:00 **15** have to ask him.
-08:-36:00 **16** Q. You didn't notice what he was doing?
-08:-36:00 **17** A. I seen him pick up a cup.
01:00:56 **18** Q. And throughout this recent few minutes of conversation,
-08:-36:00 **19** Mr. El-Hindi doesn't say two words, does he?
01:01:07 **20** A. Not too much, no.
01:01:10 **21** Q. Let's continue on.
01:01:15 **22** (Video played.)
01:01:51 **23** BY MR. BOSS:
01:01:52 **24** Q. Now, was that Marwan El-Hindi who just came in the room
-08:-36:00 **25** with the food?

-08:-36:00 **1** A. Yes.

01:01:58 **2** Q. Not the children?

01:02:00 **3** A. Correct.

01:02:01 **4** Q. And so when you told us in your direct examination when

-08:-36:00 **5** we listened only to the audiotape that the children were

01:02:08 **6** preparing to bring in the food, that was not accurate, was it?

-08:-36:00 **7** A. No, it was accurate.

-08:-36:00 **8** Q. Did Mr. El-Hindi just bring in the food?

-08:-36:00 **9** A. May I explain?

-08:-36:00 **10** Q. You'll have an opportunity to explain when you're having

01:02:22 **11** redirect with Mr. Sofer.

-08:-36:00 **12** Mr. El-Hindi just brought that food in; isn't that

-08:-36:00 **13** correct?

01:02:26 **14** A. It was handed to him by his -- one of his children.

01:02:35 **15** MR. BOSS: Go ahead.

-08:-36:00 **16** (Video played.)

01:03:44 **17** BY MR. BOSS:

01:03:45 **18** Q. Mr. Griffin, that passage, that was just describing the

-08:-36:00 **19** training camp in Egypt that Mr. El-Hindi told you was for

-08:-36:00 **20** police, Egyptian police?

01:03:59 **21** A. That's what my understanding was. He knew people that

01:04:04 **22** were in the police force to help set it up, but I don't think it

-08:-36:00 **23** was for the police. Well, that was my understanding, anyway.

-08:-36:00 **24** Q. It was related to some Egyptian police who were setting

-08:-36:00 **25** up this camp?

01:04:16 **1** A. That set it up, yes, sir.

-08:-36:00 **2** Q. They were looking for investors, Mr. El-Hindi said?

01:04:22 **3** A. Yes, I believe he did.

-08:-36:00 **4** Q. Now, that portion about it being Egyptian police and

01:04:28 **5** looking for investors was not played in the government clip, was

-08:-36:00 **6** it? Do you recall that?

-08:-36:00 **7** A. I do not, sir.

01:04:39 **8** MR. BOSS: We can continue.

01:04:42 **9** (Video played.)

01:04:44 **10** MR. SOFER: Can we approach? Your Honor, can we

01:04:48 **11** approach for a moment?

01:04:51 **12** (Whereupon the following discussion was had at the

01:06:31 **13** bench outside the hearing of the jury:)

01:06:31 **14** MR. SOFER: I believe what Counsel said is

-08:-36:00 **15** inaccurate. I haven't been able to actually look at the clip

-08:-36:00 **16** itself. But according to our transcripts and what we played,

-08:-36:00 **17** that segment was played in the government's case. I would just

-08:-36:00 **18** ask if it turns out that Counsel -- we can look at the record.

-08:-36:00 **19** And if the record reflects, in fact, we did play this, that the

-08:-36:00 **20** Court instruct the jury because they're trying to imply we're

-08:-36:00 **21** somehow holding something back here.

-08:-36:00 **22** THE COURT: I don't think that's an appropriate

-08:-36:00 **23** sidebar comment. You can later argue it. But the witness

-08:-36:00 **24** doesn't --

-08:-36:00 **25** MR. SOFER: Then I'd ask you to instruct the jury

-08:-36:00 **1** it's an inappropriate argument.

-08:-36:00 **2** THE COURT: I'd ask all of you not to make that

-08:-36:00 **3** kind of comment. You can argue that if you want, but that's

-08:-36:00 **4** not appropriate for anybody.

-08:-36:00 **5** MR. SOFER: For the record, if it turns out -- I'm

-08:-36:00 **6** not going to sit here and say 100 percent we played it.

-08:-36:00 **7** THE COURT: It doesn't matter. I'm going to tell

-08:-36:00 **8** the jury it doesn't matter.

-08:-36:00 **9** (End of sidebar).

01:06:44 **10** THE COURT: Ladies and gentlemen, whether any party

-08:-36:00 **11** plays a portion of a clip or whatever, audio, video, at a

-08:-36:00 **12** particular point is not something that the witness should be

-08:-36:00 **13** expected to recall. So disregard any question of any witnesses

-08:-36:00 **14** about that.

01:07:08 **15** Go ahead, Mr. Boss.

01:07:10 **16** MR. BOSS: Thank you, Judge.

01:07:11 **17** BY MR. BOSS:

-08:-36:00 **18** Q. Before we start up the tape --

01:07:15 **19** THE COURT: And I should mention that -- I

-08:-36:00 **20** apologize. I should expect and you should expect that in due

-08:-36:00 **21** course all the parties will see to it that whatever portions of

-08:-36:00 **22** any recordings any party thinks properly should be shown to you

01:07:34 **23** will be shown to you. Okay. Go ahead.

-08:-36:00 **24** MR. BOSS: Thank you, Judge.

01:07:38 **25** BY MR. BOSS:

-08:-36:00 **1** Q. This doorway that Mr. El-Hindi is now standing in in
01:07:44 **2** this frozen frame on our video screen at 20:39, is that the
01:07:50 **3** doorway to the kitchen?

01:07:52 **4** A. Yes. And it's also a hallway that goes down to the
-08:-36:00 **5** other rooms.

-08:-36:00 **6** Q. Are some of Mr. El-Hindi's children back in that room,
01:08:03 **7** to your recollection, at that point?

-08:-36:00 **8** A. I believe so. I heard them.

-08:-36:00 **9** Q. Mr. El-Hindi is standing in the doorway. I'm not
-08:-36:00 **10** exactly sure if we're able to tell if his head is in the kitchen
-08:-36:00 **11** area or the doorway or not. You do recall that he was having
-08:-36:00 **12** some conversations with people, perhaps his wife or children,
-08:-36:00 **13** who are in the other room; isn't that correct?

-08:-36:00 **14** A. He was being a host; and yeah, getting -- from my
01:08:28 **15** understanding, he was getting the food and things.

-08:-36:00 **16** Q. Very good. Now we're going to resume the tape in a
01:08:34 **17** moment.

01:08:37 **18** MR. BOSS: Mr. Hess, if you would, please.

01:08:39 **19** (Video played.)

01:10:19 **20** BY MR. BOSS:

01:10:21 **21** Q. That exchange with Wassim, he was talking about going
01:10:28 **22** into the Lebanese military?

01:10:33 **23** A. That was my understanding.

-08:-36:00 **24** Q. And he was going to be getting training with them; was
-08:-36:00 **25** that your understanding?

-08:-36:00 **1** A. That's my understanding, yes.

01:10:42 **2** Q. And he was talking about leaving soon to do that?

01:10:45 **3** A. I don't know if it was soon or -- he was thinking

01:10:50 **4** about -- I think he said he was thinking about going.

01:10:54 **5** MR. BOSS: Thank you. We'll continue the

-08:-36:00 **6** recording, if you please.

01:11:01 **7** (Video played.)

01:11:01 **8** BY MR. BOSS:

01:11:44 **9** Q. Mr. Griffin, that couch is still empty, isn't it?

01:11:48 **10** A. Yes. He went into the kitchen just a little bit ago.

-08:-36:00 **11** Q. He's there a little bit in the kitchen?

-08:-36:00 **12** A. No, I said a little bit ago he went into the kitchen

01:11:58 **13** when Wassim is talking about polishing his boots and going to

-08:-36:00 **14** the Lebanese Army.

01:12:03 **15** Q. Now, when we listened to that recording in the direct

-08:-36:00 **16** examination, the audiotape, at no time did you tell us that

-08:-36:00 **17** Mr. El-Hindi had left the room and spent time in the kitchen

-08:-36:00 **18** while you were having these discussions; isn't that correct?

01:12:17 **19** A. Well, the discussion had took a shift. It's quite

01:12:22 **20** apparent because Mr. Amawi and Mr. Mazloun were talking about --

-08:-36:00 **21** Q. Would you please try to answer my question.

01:12:32 **22** MR. HARTMAN: Move to strike.

01:12:33 **23** THE COURT: The jury will disregard the last

-08:-36:00 **24** response.

-08:-36:00 **25** BY MR. BOSS:

-08:-36:00 **1** Q. My question was: At no time during your direct
01:12:39 **2** examination did you tell the ladies and gentlemen of the jury
-08:-36:00 **3** that Mr. El-Hindi periodically left the room and went to the
01:12:44 **4** kitchen; isn't that correct?
01:12:46 **5** A. Because I don't think that's correct.
-08:-36:00 **6** Q. You told them that during your direct examination?
01:12:51 **7** A. Whatever portions -- the portion I was speaking of was
-08:-36:00 **8** the portion that I dominated the conversation; that's what I was
01:13:01 **9** understanding.
-08:-36:00 **10** Q. My question to you was whether you told us in your
01:13:04 **11** direct examination that Mr. El-Hindi left the room and went into
-08:-36:00 **12** the kitchen. You did not say that, did you?
01:13:10 **13** A. No, I did not.
01:13:11 **14** MR. SOFER: Objection, Your Honor. Was there even
-08:-36:00 **15** a question asked specifically about that on direct examination?
01:13:17 **16** THE COURT: I'll let the question stand.
01:13:20 **17** BY MR. BOSS:
01:13:20 **18** Q. You did not say that, did you?
01:13:22 **19** A. I did not.
01:13:30 **20** Q. Now, when you were here describing what the brothers
01:13:35 **21** overseas needed and were doing, you were not gathering
-08:-36:00 **22** information, were you?
01:13:41 **23** A. Actually, I was. If you go back to the question where I
-08:-36:00 **24** asked Mr. Amawi, did the brother e-mail you yet, and we were
01:13:51 **25** referring to laptop computers at the meeting. So that's

01:13:55 **1** gathering information.

01:13:59 **2** MR. BOSS: We're going to resume the recording.

01:14:07 **3** Mr. Hess, go ahead.

01:14:09 **4** (Video played.)

01:17:56 **5** BY MR. BOSS:

-08:-36:00 **6** **Q.** Now, that comment: Have to show Brother Wassim some of

-08:-36:00 **7** the films, too, 'cause you -- it's pretty, you still got a new

-08:-36:00 **8** film too, brother.

01:18:15 **9** That was your idea to show films to Wassim?

01:18:19 **10** **A.** That film, the new ones.

01:18:22 **11** **Q.** Films, plural. You're the one who wanted to show the

01:18:27 **12** films?

-08:-36:00 **13** **A.** We had -- yes.

01:18:34 **14** MR. BOSS: Go ahead, when we're ready.

01:18:41 **15** (Video played.)

01:25:51 **16** BY MR. BOSS:

01:25:52 **17** **Q.** Funding: I'll be able to fund most of it, but, of

-08:-36:00 **18** course, my funds are limited.

-08:-36:00 **19** You were offering to fund this enterprise?

01:26:00 **20** **A.** Partly.

-08:-36:00 **21** **Q.** I beg your pardon?

-08:-36:00 **22** **A.** Partly.

01:26:09 **23** **Q.** And then it was your idea to check into grants there?

01:26:14 **24** MR. BOSS: Let's continue on when everyone's ready.

01:26:19 **25** (Video played.)

01:26:56 **1** BY MR. BOSS:

-08:-36:00 **2** **Q.** When Wassim asked what are the grants for, and you

01:27:01 **3** answered: Uh, no, no, what we'll do, start something else.

01:27:09 **4** What did you mean by that?

01:27:11 **5** **A.** I can't recall. But I was telling him no, but I can

01:27:16 **6** tell you in a retrospect kind of thing.

01:27:19 **7** **Q.** Well, let's continue on and see.

01:27:22 **8** (Video played.)

01:28:05 **9** BY MR. BOSS:

-08:-36:00 **10** **Q.** Did Marwan El-Hindi ever seek and obtain any grants from

-08:-36:00 **11** which money was directed to you and this enterprise?

01:28:19 **12** **A.** No, he didn't get that far.

01:28:21 **13** **Q.** This is in February of 2005?

01:28:27 **14** **A.** Yes.

-08:-36:00 **15** **Q.** There was quite a period of time after this before the

01:28:32 **16** indictment in this case was returned; isn't that correct?

01:28:35 **17** **A.** Yes.

01:28:37 **18** **Q.** What was that, about a year or so?

-08:-36:00 **19** **A.** About, yes.

01:28:43 **20** **Q.** And during that year time period, did Mr. El-Hindi file

-08:-36:00 **21** for any grants that were used for or intended to be used to

01:28:53 **22** funnel money instead of for low income housing or orphans

01:28:58 **23** overseas for one of your projects? No? Is that correct, no?

-08:-36:00 **24** **A.** No.

01:29:08 **25** **Q.** Thank you. Let's move forward in a moment here.

01:29:16 **1** (Video played.)

01:32:19 **2** BY MR. BOSS:

01:32:23 **3** **Q.** That phrase, "One day I just woke up and I was on the

-08:-36:00 **4** wrong side." That sounds familiar to me. Did you say

-08:-36:00 **5** something like that in your direct examination about when you

-08:-36:00 **6** came to a realization after 9/11, you woke up one day and

-08:-36:00 **7** realized that you had to get back into the game?

01:32:47 **8** **A.** No.

01:32:53 **9** MR. BOSS: We can go forward.

01:32:56 **10** (Video played.)

01:36:14 **11** MR. BOSS: Your Honor, this matter goes on for some

-08:-36:00 **12** time. Perhaps it would be a reasonable time to take a break if

01:36:21 **13** the Court likes, or we can continue.

-08:-36:00 **14** THE COURT: It's up to you.

01:36:29 **15** MR. BOSS: I think a break would be helpful at this

-08:-36:00 **16** point.

-08:-36:00 **17** THE COURT: Are you going to ask questions over a

01:36:36 **18** period of time?

01:36:37 **19** MR. BOSS: There will be more questions, but not

01:36:40 **20** immediately.

-08:-36:00 **21** THE COURT: We'll take our mid-morning break.

01:36:44 **22** (Recess taken).

01:55:12 **23** THE COURT: You may be seated. Mr. Boss, you may

-08:-36:00 **24** resume.

01:55:17 **25** Mr. Griffin, you remain under oath.

01:55:19 **1** MR. BOSS: Thank you, Judge.

01:55:23 **2** THE COURT: Should they put the earphones back on?

-08:-36:00 **3** MR. BOSS: Not yet.

01:55:27 **4** BY MR. BOSS:

01:55:28 **5** **Q.** Mr. Griffin, we provided you a transcript in front of

01:55:31 **6** you there that tracks the video that we are watching here. And

-08:-36:00 **7** there was a passage back on page 61 that I meant to stop and ask

01:55:44 **8** you a question about. If you could go to that, please.

01:55:51 **9** **A.** 61?

01:55:52 **10** **Q.** Yes, sir.

01:55:56 **11** **A.** I'm there.

01:56:01 **12** MR. SOFER: One second, Counsel, please, while we

01:56:04 **13** back up.

-08:-36:00 **14** MR. BOSS: In fact, maybe the page before would be

-08:-36:00 **15** a good place to start, page 60. Then it will go over to 61.

01:56:35 **16** (Discussion had off the record.)

01:56:53 **17** BY MR. BOSS:

01:56:53 **18** **Q.** Mr. Griffin, just after the time marker on the top third

-08:-36:00 **19** of the page, Mr. El-Hindi was heard to say they have: Yeah,

01:57:02 **20** they have a film. It's not a film, but it shows you the letter

-08:-36:00 **21** of Fatima inside Abu Ghraib prison.

01:57:11 **22** Do you remember that passage?

01:57:12 **23** **A.** Yes.

01:57:17 **24** **Q.** And the letter from Fatima, you were familiar with that?

-08:-36:00 **25** **A.** Somewhat, yes.

-08:-36:00 **1** Q. And that was a letter from -- purportedly from a woman
-08:-36:00 **2** complaining about abuses that she and others have suffered
-08:-36:00 **3** inside of the prison Abu Ghraib?

-08:-36:00 **4** A. Yes, sir.

01:57:34 **5** Q. It was not an instructional film or video or document;
01:57:39 **6** isn't that correct?

-08:-36:00 **7** A. No, it was just a request.

01:57:43 **8** Q. And it was about her complaining of her conditions there
-08:-36:00 **9** at the prison; is that correct?

01:57:48 **10** A. Also through a request, yes, sir.

01:57:54 **11** Q. Okay. Now we can go back to the portion that we were
-08:-36:00 **12** at. Hopefully I marked my book before I closed the cover.

01:58:12 **13** Is everyone preparing?

01:58:24 **14** (Video played.)

02:06:56 **15** THE JUROR: Judge.

02:07:00 **16** THE JUROR: The text started wiggling out and just
-08:-36:00 **17** skipped a bunch of lines. Now it's --

-08:-36:00 **18** THE JUROR: It's not matching up.

-08:-36:00 **19** THE JUROR: It's not matching at all. I don't
-08:-36:00 **20** know what happened.

02:07:12 **21** MR. BOSS: May I have a moment, please?

02:07:15 **22** MR. SOFER: We noticed it also, Judge.

02:07:19 **23** THE COURT: I noticed it a little earlier.

02:07:26 **24** MR. BOSS: Perhaps we should take a short break.

-08:-36:00 **25** THE COURT: Sure, if you want to stand up and

-08:-36:00 **1** stretch. Let's see how long this takes.

02:08:56 **2** MR. BOSS: Your Honor, could we excuse the jury

02:09:00 **3** while we try to iron this out?

02:09:05 **4** THE COURT: Sure.

02:09:06 **5** (Jury excused.)

02:09:50 **6** MR. BOSS: I don't believe it's an IT issue. It

-08:-36:00 **7** has to do with the synchronization of the transcript with the

02:10:04 **8** video.

02:14:13 **9** THE COURT: Do we have transcripts?

-08:-36:00 **10** MR. BOSS: If I could explain. The transcripts

-08:-36:00 **11** are indeed exactly the same as what appears on the screen.

-08:-36:00 **12** What happened was the other individual who was assisting Mr.

-08:-36:00 **13** Hess in synchronizing, somewhat recently, the videotape to the

02:14:31 **14** transcript, of course, didn't speak Arabic and got lost when

02:14:35 **15** they were speaking exclusively Arabic. When it went back to

02:14:39 **16** English, it catches back up and is synchronized again. So it

-08:-36:00 **17** appears to be an accurate transcription of the words that have

02:14:47 **18** been said as translated, but not necessarily synchronized with

-08:-36:00 **19** the verbal exchange. And so as I understand it at this point,

-08:-36:00 **20** we've got a couple of options. We could play it without the

-08:-36:00 **21** total synchronization.

02:15:05 **22** MR. HARTMAN: We may have a full transcript with

-08:-36:00 **23** the Arabic translated that we could just page by page on the

02:15:11 **24** ELMO, if we have it. I don't know if we do or not.

02:15:18 **25** MR. SOFER: The jury can't follow that. They

-08:-36:00 **1** don't speak Arabic.

02:15:23 **2** MR. BOSS: We could attempt to resynchronize it,

-08:-36:00 **3** which would cause some delay now, or we can play it with the

02:15:29 **4** same explanation to the jury that --

02:15:32 **5** THE COURT: My preference would be, because if I

-08:-36:00 **6** understood what Steve just said, once it gets back in primarily

02:15:41 **7** English, it's resynchronized.

02:15:44 **8** MR. BOSS: We know that's the case at least at the

-08:-36:00 **9** next clip or two. We don't know if it remains that way

02:15:50 **10** throughout.

02:15:51 **11** MR. SOFER: I think what's happening, Judge, we've

-08:-36:00 **12** been through this as well. Not surprising, you need an Arabic

02:16:00 **13** speaker, obviously, to synch up Arabic audio. I think the

02:16:04 **14** problem with the last one was simply that the Arabic flew by so

-08:-36:00 **15** fast they couldn't read it. Now we're stuck waiting for it

02:16:12 **16** again. I'm not highly offended by that under the circumstances

-08:-36:00 **17** at this place. There may be sections of this where I would

-08:-36:00 **18** feel differently. I can say this: The government has taken

-08:-36:00 **19** its portions, and they are properly sync'd. So if we have an

02:16:33 **20** objection as to -- what Counsel's doing is playing the whole

-08:-36:00 **21** tape, some of which contains government portions, some of it

-08:-36:00 **22** does not. When they're outside of our portion, I can't vouch

-08:-36:00 **23** for the way the tape -- I'm not going to vouch for the

-08:-36:00 **24** transcript either. It's just that we could fix this if they're

-08:-36:00 **25** in our section. And if it's in our section, that's likely what

-08:-36:00 **1** we cared about the most. So once we see something that offends
-08:-36:00 **2** us going by --

-08:-36:00 **3** THE COURT: Why don't we proceed. I'll tell the
-08:-36:00 **4** jury it may go out of synch, and we'll try to deal with it if we
-08:-36:00 **5** can. I'll just explain what happened, which was the person
-08:-36:00 **6** doing the synchronization --

02:17:14 **7** MR. BOSS: Since the government has its sections
02:17:17 **8** synchronized, I propose that what we do is alternate back and
02:17:21 **9** forth between their clips with timing markers and the ones that
-08:-36:00 **10** are not part of their clip; when they exhaust their transcript
-08:-36:00 **11** portion, we go back to what has yet to be -- or what we have.

-08:-36:00 **12** MR. SOFER: The problem there, Judge, is we
02:17:42 **13** suggested this method, sent Counsel our clips, and asked them
02:17:48 **14** for an explanation of where our clips fit into theirs.
02:17:53 **15** Otherwise you're going to end up playing -- you're going to
-08:-36:00 **16** overlap sections, which doesn't make any sense. It could be
02:18:00 **17** very time-consuming also. And we never heard back from them.

02:18:04 **18** MR. HARTMAN: I didn't have time to get to that.

-08:-36:00 **19** MR. SOFER: We were unable to figure out whether
-08:-36:00 **20** our clips are essentially a rehash.

-08:-36:00 **21** THE COURT: Pick up where they leave off.

-08:-36:00 **22** MR. SOFER: I'm fairly certain, given what I've
-08:-36:00 **23** seen so far, they won't. It's not like it will go A, B, C, D.

-08:-36:00 **24** It's going to go 1 then 1.8. You're going to have a bunch of
-08:-36:00 **25** overlap.

-08:-36:00 **1** THE COURT: At least with this one, which we have,
02:18:28 **2** what, how much other -- 15 minutes or so? Did you say it was 76
02:18:35 **3** minutes?
-08:-36:00 **4** So we have 22 more minutes to go.
02:18:39 **5** MR. SOFER: Maybe.
02:18:40 **6** THE COURT: You're showing the whole segment,
-08:-36:00 **7** right, Mr. Boss?
-08:-36:00 **8** MR. BOSS: I'm sorry, Judge?
-08:-36:00 **9** THE COURT: You're showing the whole segment of
-08:-36:00 **10** this?
02:18:46 **11** MR. BOSS: It was our intention to play the entire
02:18:49 **12** videotape.
-08:-36:00 **13** THE COURT: Why don't we conclude with this, and
-08:-36:00 **14** we'll go from there.
-08:-36:00 **15** MR. BOSS: Conclude with --
02:18:54 **16** THE COURT: This tape.
02:18:55 **17** MR. SOFER: I think this is the only place we're
02:18:57 **18** going to have this problem anyway.
02:18:59 **19** MR. BOSS: We hope.
02:19:00 **20** THE COURT: I'll just explain to the jury. It's
-08:-36:00 **21** going to be a bit -- candidly, I find the English, at least the
02:19:07 **22** English of Mr. Griffin, to be entirely clear. And listening to
02:19:14 **23** it, you can follow it pretty well, the English. Obviously the
02:19:24 **24** Arabic they'd have to rely upon -- let's get the jury back.
02:19:35 **25** MR. SOFER: Judge, do you want the witness on the

-08:-36:00 **1** stand?

02:19:38 **2** THE COURT: Please.

02:20:08 **3** MR. SOFER: There is the issue about this

02:20:10 **4** particular exhibit. I believe it's the only exhibit that's

-08:-36:00 **5** been played that's not in evidence. And I don't know if

02:20:16 **6** Counsel is planning on moving it into evidence, but certainly

02:20:20 **7** since the government didn't introduce it, you're playing

-08:-36:00 **8** something which technically at this juncture is not in evidence.

-08:-36:00 **9** I would say we won't object to it going into evidence, but I

-08:-36:00 **10** think we need to clarify.

-08:-36:00 **11** THE COURT: Okay. When Cindy gets back, we can

02:20:38 **12** tidy that part of the record.

02:20:41 **13** MR. BOSS: Judge, we will have --

02:21:30 **14** (Jury in.)

-08:-36:00 **15** THE COURT: You can be seated. Thank you for your

02:21:35 **16** patience. While he's coming back, ladies and gentlemen,

-08:-36:00 **17** obviously there's some error in the synchronization. It

02:21:43 **18** appears what happened is that the -- somehow the synchronization

-08:-36:00 **19** of the translation of the conversation in Arabic, which made up

-08:-36:00 **20** a moderately considerable portion there that we were watching,

02:22:02 **21** didn't track completely, and that had a spillover effect in

02:22:07 **22** terms of some of the English. We think and hope that once the

02:22:10 **23** conversation resumes, if it does, substantially in English, as I

-08:-36:00 **24** think it does, that that problem will be rectified. If not, I

-08:-36:00 **25** want to remind you that what you hear is the evidence.

02:22:27 **1** And, Mr. Boss, I'll say if a lack of
02:22:33 **2** synchronization causes any problem, you're welcome then,
02:22:37 **3** particularly during the questions, to display a transcript on
-08:-36:00 **4** the basis of that.
-08:-36:00 **5** MR. BOSS: Thank you, Judge.
02:22:42 **6** THE COURT: We will play the audio with the
-08:-36:00 **7** transcript, if that's needed. I don't know if it will be, but
-08:-36:00 **8** feel free to proceed in that way if you want. Okay.
02:23:06 **9** While we're at it, formally for the record you move
-08:-36:00 **10** for the admission of these portions of the video that are now
-08:-36:00 **11** being displayed?
-08:-36:00 **12** MR. BOSS: We will move the entire video into
-08:-36:00 **13** evidence, Judge.
02:23:20 **14** THE COURT: Any objection?
02:23:21 **15** MR. SOFER: No.
02:23:22 **16** MR. BOSS: If we could try the earphones again. I
-08:-36:00 **17** apologize for our problem.
02:23:33 **18** THE CLERK: Is the video going to be marked?
-08:-36:00 **19** MR. BOSS: We will mark the video. I don't have
-08:-36:00 **20** the exhibit number.
-08:-36:00 **21** (Video played.)
02:24:15 **22** MR. BOSS: Clearly we still have a problem with the
-08:-36:00 **23** video, Judge, or the synchronization.
02:24:21 **24** MR. SOFER: I think it's just catching up.
02:24:24 **25** MR. HARTMAN: It will catch up.

02:25:47 **1** MR. BOSS: Your Honor, I would like to stop this,
02:25:49 **2** please. I believe the synchronization is not accurate at this
-08:-36:00 **3** point, and I believe that we should have it remedied before it's
02:25:56 **4** displayed to the jury, and we do want to display it to the jury.
02:26:00 **5** THE COURT: Okay. What would you propose doing?
02:26:07 **6** Basically whatever you want.
02:26:09 **7** MR. BOSS: Thank you, Judge. Give us a moment,
-08:-36:00 **8** please.
02:26:11 **9** MR. SOFER: I certainly object to that as a
02:26:14 **10** standard ruling, Your Honor.
02:26:17 **11** THE COURT: Whatever you want.
02:26:21 **12** MR. BOSS: I have some other ideas.
02:26:25 **13** MR. SOFER: Those are frightening words to me,
-08:-36:00 **14** Judge.
-08:-36:00 **15** MR. BOSS: What happened, an Arabic speaking member
-08:-36:00 **16** of our team who will be assisting Mr. Hess over the next hour or
02:26:36 **17** so in synchronizing this properly to the tape. If we could
02:26:40 **18** perhaps have some adjournment at this point in time, and then
02:26:44 **19** perhaps run it into lunch. Then after lunch we should be back
-08:-36:00 **20** on track.
02:26:50 **21** THE COURT: I gather lunch -- lunch won't be here,
02:26:56 **22** but I trust you can find ways to occupy -- I'm sorry.
02:27:01 **23** MR. BOSS: Another possible -- pardon me for
02:27:05 **24** interrupting. We have a couple other matters we were going to
02:27:08 **25** take up after this. Perhaps we could break from this portion

-08:-36:00 **1** of the examination and return to it.

-08:-36:00 **2** THE COURT: If you can do that, why don't you do

-08:-36:00 **3** that.

02:27:15 **4** MR. BOSS: Thank you, Judge.

02:27:17 **5** THE COURT: Do you want to take a moment or two to

02:27:20 **6** redeploy your troops, as they were? That's fine.

-08:-36:00 **7** MR. BOSS: I'll do my best.

02:28:54 **8** BY MR. BOSS:

02:28:55 **9** **Q.** Mr. Griffin, I'd like you to think back now to the

02:29:00 **10** period before this dinner meeting, specifically February 2,

02:29:05 **11** 2005. Do you -- and if you need your reference guide, please

02:29:11 **12** feel free to rely upon it. This was the first day that you

-08:-36:00 **13** brought Marwan El-Hindi together with Mr. Amawi; do you recall

02:29:21 **14** that?

02:29:22 **15** MR. SOFER: Could you give us a 1D, Counsel?

02:29:27 **16** MR. BOSS: I'm sorry. I believe that we are

02:29:43 **17** referring to --

02:29:46 **18** **A.** Did you say February 9?

02:29:50 **19** BY MR. BOSS:

02:29:50 **20** **Q.** February 2.

02:29:51 **21** **A.** I need the other book.

-08:-36:00 **22** MR. SOFER: One second while we catch up, Judge.

02:30:02 **23** THE COURT: I assume the synch problems with the

-08:-36:00 **24** printed transcripts will be a lot easier to repair than the ones

-08:-36:00 **25** with the video.

02:30:11 **1** MR. HARTMAN: I don't know, Judge, lawyers dealing
-08:-36:00 **2** with technical issues.

-08:-36:00 **3** THE COURT: That's quite all right. Take whatever
02:30:18 **4** time you need.

02:31:33 **5** BY MR. BOSS:

-08:-36:00 **6** Q. If we were looking at the transcript, it would be -- or
-08:-36:00 **7** the tape, ID-21 from case 69185 on February 2, 2005.

02:32:17 **8** Mr. Griffin, do you recall that this was February
02:32:22 **9** 2, 2005, the first day that you took Marwan El-Hindi and put him
02:32:28 **10** together with Mr. Amawi?

02:32:31 **11** A. I can't recall, but it's one of the times.

02:32:35 **12** Q. You recall that you took Marwan El-Hindi to Mr. Amawi's
02:32:38 **13** house after Mr. El-Hindi and you went to a CopyMax store?

02:32:43 **14** A. Yes, sir.

-08:-36:00 **15** Q. And you went to that CopyMax store to pick up what
02:32:49 **16** business article, if you recall?

02:32:52 **17** A. I think it was the EMS stuff.

-08:-36:00 **18** Q. EMSS?

02:32:58 **19** A. You know, the European Medical --

-08:-36:00 **20** Q. Was it pamphlets or a PowerPoint on a CD that had been
-08:-36:00 **21** done?

-08:-36:00 **22** A. No, it was on a CD that we were giving -- we gave
02:33:12 **23** to CopyMax to make brochures, the best of my recollection.

-08:-36:00 **24** Q. And you and Mr. El-Hindi were -- did he rely on you for
02:33:23 **25** a ride to get there to do that?

-08:-36:00 **1** A. I believe he did this day.

02:33:32 **2** Q. Now, you testified on your direct examination that on

-08:-36:00 **3** February 1, the day before this meeting with Mr. Amawi and

-08:-36:00 **4** Mr. El-Hindi, that you had made arrangements with Marwan

-08:-36:00 **5** El-Hindi to visit with Mohammad Amawi on February 2, that day

-08:-36:00 **6** that they got together, correct?

-08:-36:00 **7** A. I believe so, yes.

02:33:56 **8** Q. And, in fact, that testimony that you gave was given on

02:34:01 **9** April 9 here --

02:34:12 **10** MR. SOFER: Is there a question, Your Honor?

02:34:14 **11** MR. BOSS: If I may have just a moment, please.

02:34:25 **12** BY MR. BOSS:

02:34:26 **13** Q. Do you remember being asked by Mr. Sofer whether

-08:-36:00 **14** Mohammad Amawi had approved Marwan El-Hindi to come over to

02:34:32 **15** Mr. El-Hindi -- excuse me, Mr. Amawi's house?

02:34:35 **16** A. I believe so, yes.

-08:-36:00 **17** Q. And, in fact, your testimony was that Mr. Amawi had, in

-08:-36:00 **18** fact, approved of you coming over with Mr. El-Hindi and was

-08:-36:00 **19** expecting you on February 2; isn't that correct?

02:34:49 **20** A. Somewhat, yes.

-08:-36:00 **21** Q. Somewhat?

-08:-36:00 **22** A. Yes.

-08:-36:00 **23** Q. But isn't the fact that you -- or did you report that

-08:-36:00 **24** fact to the FBI?

02:35:02 **25** A. I can't recall.

02:35:23 **1** Q. Would you please turn to page 2 of your transcript.

02:35:31 **2** A. Yes, sir.

02:35:32 **3** Q. And you can read that over, then I'd have a question for

-08:-36:00 **4** you.

-08:-36:00 **5** A. Just the blurb, or the whole page?

-08:-36:00 **6** Q. Session 3 that starts with a comment from Mr. El-Hindi,

-08:-36:00 **7** then a comment by Mr. Amawi, and then by you.

02:36:03 **8** MR. SOFER: Judge, I believe Counsel has directed

-08:-36:00 **9** the witness to the wrong transcript based on what I'm looking

-08:-36:00 **10** at.

02:36:12 **11** MR. BOSS: May I approach the witness, Judge?

-08:-36:00 **12** THE COURT: Sure.

02:36:17 **13** MR. SOFER: If I may, Judge.

02:36:20 **14** THE COURT: Chat with Mr. Hartman. You and Mr.

02:36:24 **15** Hartman consult.

02:36:28 **16** MR. BOSS: It should be ID-22, Judge.

02:36:37 **17** Let's try ID-22, Mr. Griffin, which would be the

-08:-36:00 **18** next one in, I believe.

02:37:00 **19** May I approach the witness, Judge?

-08:-36:00 **20** THE COURT: Of course.

02:37:11 **21** BY MR. BOSS:

-08:-36:00 **22** Q. In fact, I believe we have ID-22 there, and I would

-08:-36:00 **23** direct your attention, Mr. Griffin, to this passage here. See

-08:-36:00 **24** if that refreshes your recollection about the exchange that day.

02:37:46 **25** A. Yes.

-08:-36:00 **1** Q. In fact, when you went over to Mr. Amawi's house there
02:37:51 **2** on February 2, Mr. Amawi wasn't expecting you at that time, was
02:37:57 **3** he?
02:37:58 **4** A. He was expecting us, but I don't think -- we had talked
-08:-36:00 **5** about it previously.
-08:-36:00 **6** Q. When you said sorry to spring in on you. I called, but
02:38:11 **7** nobody answered. That suggests that he wasn't expecting you;
-08:-36:00 **8** isn't that correct?
02:38:16 **9** A. Not at that time, yes, sir.
02:38:19 **10** Q. Okay. And Mr. Amawi indicated he was sleeping?
02:38:23 **11** A. Yes, sir.
02:38:27 **12** Q. Does that appear to you that he was expecting you and
-08:-36:00 **13** the prior arrangements had been made?
02:38:33 **14** A. Once again, it wasn't necessarily that -- possibly not
-08:-36:00 **15** even that day, but in the prior days before this, I know I said
02:38:43 **16** something.
-08:-36:00 **17** Q. Could you now go to page 7 of 60 of that same
02:38:47 **18** transcript.
02:38:51 **19** A. Yes.
02:38:52 **20** Q. And in the middle of that page, you explain to Mr. Amawi
02:39:00 **21** that we were downloading the videos and everything from --
02:39:08 **22** MR. SOFER: Objection, Your Honor, lack of
02:39:11 **23** foundation.
02:39:12 **24** BY MR. BOSS:
02:39:12 **25** Q. Please read that. See if you recall that exchange.

02:39:21 **1** THE COURT: While he's doing so, why don't you come
-08:-36:00 **2** on up here.

02:39:25 **3** (Whereupon the following discussion was had at the
02:40:28 **4** bench outside the hearing of the jury:)

02:40:28 **5** THE COURT: Where are you headed with this? I
-08:-36:00 **6** assume that's the gist of the objection.

-08:-36:00 **7** MR. SOFER: He's reading from the transcript. I
-08:-36:00 **8** don't know why.

-08:-36:00 **9** MR. BOSS: I'll just ask the question.

-08:-36:00 **10** (End of side-bar discussion.)

02:40:30 **11** BY MR. BOSS:

02:40:32 **12** **Q.** Mr. Griffin, after reviewing that portion of the

-08:-36:00 **13** transcript, do you recall indicating that you had been over at

02:40:39 **14** CopyMax and just -- and indicated to Mr. Amawi that you just

-08:-36:00 **15** decided to stop in?

-08:-36:00 **16** **A.** Yes, sir.

02:41:00 **17** **Q.** Now, it wasn't Marwan El-Hindi's idea there to stop in?

02:41:04 **18** Marwan understood that you were going to CopyMax; isn't that

02:41:08 **19** correct?

02:41:09 **20** **A.** Yes, he knew we were going to CopyMax.

-08:-36:00 **21** **Q.** And it was your idea to then bring Mr. El-Hindi to Mr.

-08:-36:00 **22** Amawi's at that point, correct?

-08:-36:00 **23** **A.** I'm sure I made the comment or even asked, did he want

-08:-36:00 **24** to stop by Mr. Amawi's.

-08:-36:00 **25** **Q.** Mr. El-Hindi didn't even know Mr. Amawi at that point,

- 02:41:28 **1** did he?
- 08:-36:00 **2** **A.** I don't know.
- 08:-36:00 **3** **Q.** To your knowledge?
- 08:-36:00 **4** **A.** Formally.
- 02:41:33 **5** **Q.** So it was your doing that brought them together at that
- 08:-36:00 **6** point in time?
- 08:-36:00 **7** **A.** Yeah, at that time, yes.
- 02:41:47 **8** **Q.** Now, when you were at Mr. Amawi's on that day, on
- 02:41:52 **9** February 2, 2005, wasn't it you who asked Mr. Amawi to show
- 02:41:59 **10** Marwan El-Hindi videos?
- 02:42:03 **11** **A.** Could you repeat that? I'm sorry.
- 08:-36:00 **12** **Q.** When you took Mr. El-Hindi to Mr. Amawi's when they met
- 02:42:11 **13** for that first time on February 2, 2005, wasn't it you who
- 02:42:17 **14** suggested to Mr. Amawi that he show videos to Mr. El-Hindi?
- 02:42:22 **15** **A.** Could you see where that specific --
- 02:42:27 **16** **Q.** Let's try page 5.
- 02:42:36 **17** **A.** Yes.
- 02:42:43 **18** **Q.** And Marwan El-Hindi didn't ask Mr. Amawi at that time to
- 02:42:47 **19** see the videos; isn't that correct?
- 02:42:50 **20** **A.** He didn't ask Mr. Amawi, no.
- 08:-36:00 **21** THE COURT: I didn't hear what you said. Maybe
- 08:-36:00 **22** don't lean quite so far into the microphone, just speak up
- 08:-36:00 **23** clearly, but not quite so far into the microphone.
- 08:-36:00 **24** And your answer was?
- 08:-36:00 **25** **A.** Mr. El-Hindi did not ask Mr. Amawi.

02:43:07 **1** BY MR. BOSS:

02:43:07 **2** **Q.** Mr. El-Hindi did not ask Mr. Amawi to view videos; it
-08:-36:00 **3** was your idea, right?

-08:-36:00 **4** **A.** Yes, sir.

02:43:16 **5** **Q.** And you told Mr. Amawi that Mr. El-Hindi wanted to

-08:-36:00 **6** train, isn't that correct, that date and time on that same page,

02:43:37 **7** at the bottom?

02:43:43 **8** **A.** It doesn't say anything about the training. It just

02:43:47 **9** says I state that Brother Marwan is a good brother, to be

02:43:52 **10** trusted with everything too. So --

02:43:59 **11** MR. BOSS: May I approach the witness for a moment?

-08:-36:00 **12** THE COURT: Of course.

02:44:21 **13** MR. SOFER: Counsel --

02:44:22 **14** (Discussion had off the record.)

02:44:38 **15** MR. BOSS: Judge, I think this would be a good time

-08:-36:00 **16** for us to break and try to synchronize the recording.

02:44:45 **17** THE COURT: Ladies and gentlemen, we'll break until

-08:-36:00 **18** after lunch. I assume that will be 1:00. But at least, more

-08:-36:00 **19** importantly, let us know, let Cindy know when you're done with

-08:-36:00 **20** lunch. If we're ready to go, we will. If not, we'll try to

-08:-36:00 **21** give you some estimated time of rearrival back in court. Thank

-08:-36:00 **22** you for your patience and for bearing with us.

02:45:55 **23** (Jury out.)

02:46:02 **24** THE COURT: Let's try to get started by 1:00. If

02:46:06 **25** you guys are done before then, let Cindy know. The defenders

-08:-36:00 **1** have a conference call at about 11:45.

02:46:23 **2** MR. IVEY: It's going to start at noon. It may

02:46:27 **3** take us up to 1:00.

02:46:29 **4** THE COURT: I suspect if I walk in and say, Mr.

-08:-36:00 **5** Terez, your colleagues are needed back in the courtroom --

02:46:36 **6** MR. IVEY: He'll probably listen to you.

-08:-36:00 **7** THE COURT: Why don't you use the conference room

-08:-36:00 **8** here.

04:32:24 **9** MR. SOFER: Your Honor, while we're here, if we

-08:-36:00 **10** can, I talked over the timing issue with my colleagues, and the

-08:-36:00 **11** government will request until Friday to redirect Mr. Griffin,

04:32:37 **12** given the volume of material we think we have to go through. I

-08:-36:00 **13** know that kills a half a day for us. I understand. It seems

-08:-36:00 **14** to me we'll probably, from what I've talked to counsel about,

04:32:50 **15** we're going to get to 2:30, 3:00 with this. We have at least

04:32:55 **16** another half-hour left for one video plus some more questions.

-08:-36:00 **17** And I think -- I would argue it's a reasonable request under the

04:33:04 **18** circumstances that we're talking about a day and a half versus

-08:-36:00 **19** two weeks. I can also assure the Court it will be one of the

-08:-36:00 **20** last times, if not the last time, that I will ever ask for this.

-08:-36:00 **21** I think we said yesterday our witnesses -- okay.

04:33:28 **22** THE COURT: That's fine.

04:37:31 **23** MR. SOFER: I ask, as you did with defense

-08:-36:00 **24** counsel, that you not say the government needs more time, that

-08:-36:00 **25** it's a scheduling issue, not that the government is slow in its

-08:-36:00 **1** thought processes and its ability to process information.

-08:-36:00 **2** MR. HARTMAN: You can call it a joint request.

-08:-36:00 **3** MR. SOFER: Talking to Counsel for Mr. Amawi, I

-08:-36:00 **4** would hope that we would not take the whole day by any stretch

-08:-36:00 **5** of the imagination on Friday, and recross would hopefully

-08:-36:00 **6** commence and be done with on Friday. When we're done with Mr.

-08:-36:00 **7** Griffin, we would call Agent Coats next.

-08:-36:00 **8** THE COURT: That would be great. Let's try as

-08:-36:00 **9** vigorously as we can to accomplish that.

-08:-36:00 **10** MR. SOFER: We're not looking to put the whole case

-08:-36:00 **11** back in on redirect.

-08:-36:00 **12** THE COURT: I do have to leave not later than about

-08:-36:00 **13** quarter 'til 5:00 or 4:30 on Friday because I have a flight.

-08:-36:00 **14** MR. SOFER: Understood, Judge.

-08:-36:00 **15** MR. HARTMAN: We are going to be replaying a

-08:-36:00 **16** portion of a clip the government played. We have agreed on two

-08:-36:00 **17** changes to the transcript to make it more accurate; one from

-08:-36:00 **18** each side, actually. We're going to tell the jury it's going to

-08:-36:00 **19** be about six or seven minutes.

04:49:22 **20** (Jury in.)

04:49:24 **21** THE COURT: Ladies and gentlemen, as tempted as I am

-08:-36:00 **22** to point to the lawyer whom I asked 22 minutes ago how much

-08:-36:00 **23** longer, he said not long -- or she -- and I said, 15 minutes?

-08:-36:00 **24** Oh, no.

04:49:42 **25** Anyway, here we go. We think things are fixed. We

04:49:46 **1** appreciate your patience. As you learned, these things happen.

04:49:52 **2** Thanks for your patience.

04:49:56 **3** Mr. Boss, you may resume. Mr. Griffin, you remain

04:50:00 **4** under oath.

-08:-36:00 **5** MR. BOSS: Thank you, Judge.

-08:-36:00 **6** THE COURT: By the way, let me indicate, we have

-08:-36:00 **7** some hope that the cross-examination of Mr. Griffin will

-08:-36:00 **8** complete today. And if so, for various reasons having to do

-08:-36:00 **9** with commitments of one kind or another, I do want to declare

04:50:28 **10** tomorrow a holiday for all of you -- it won't be for us -- then

04:50:32 **11** resume redirect examination by the government and perhaps even

04:50:36 **12** finish up entirely with Mr. Griffin on Friday. That sort of

04:50:42 **13** depends. It's my custom to allow recross then reredirect until

04:50:47 **14** finally we get to the point that there are no further questions

-08:-36:00 **15** of the witness.

04:50:52 **16** I don't mean to put you on the spot, Mr. Boss, but

04:50:56 **17** just giving a head's up.

-08:-36:00 **18** MR. BOSS: That's quite all right.

-08:-36:00 **19** THE COURT: I want you to know if that happens,

-08:-36:00 **20** then I think we'll not have court tomorrow because we still do

04:51:06 **21** seem to be moving along at a pace that will put us to completing

-08:-36:00 **22** the case I hope somewhat sooner than we anticipated when we

04:51:15 **23** conducted the voir dire. I think we're doing pretty well. Go

04:51:21 **24** ahead.

-08:-36:00 **25** MR. BOSS: Thank you. I do apologize for our

-08:-36:00 **1** technical problems.

04:51:27 **2** BY MR. BOSS:

-08:-36:00 **3** **Q.** As a matter of fact, Mr. Griffin, we're going to go

-08:-36:00 **4** back, with the assistance of Mr. Hess, and replay a short

-08:-36:00 **5** portion that preceded when we had all the technical difficulties

04:51:40 **6** with the synching of the script with the video. And while

-08:-36:00 **7** we're doing that, we picked up on a mistake that was in the

-08:-36:00 **8** transcripts, in fact, where several times the word "American"

04:51:53 **9** appeared; instead, it was a different word that is now corrected

-08:-36:00 **10** in the transcripts, and we will play that, and that will be

04:52:02 **11** encompassed in the change. Okay.

04:52:05 **12** MR. BOSS: If everyone could assume the position, I

-08:-36:00 **13** guess. Are we ready? Mr. Hess -- wait a minute. Let's try

04:52:27 **14** it.

04:52:27 **15** (Video played.)

05:04:40 **16** BY MR. BOSS:

05:04:41 **17** **Q.** Just a quick question, Mr. Griffin. This King Abdullah

05:04:47 **18** you were talking about with them, that's the King of Jordan?

-08:-36:00 **19** **A.** Yes.

-08:-36:00 **20** **Q.** And you were training him?

-08:-36:00 **21** MR. SOFER: Objection, relevance.

-08:-36:00 **22** THE COURT: I would agree.

05:04:58 **23** BY MR. BOSS:

-08:-36:00 **24** **Q.** Was the training you were doing with King Abdullah for

05:05:02 **25** Jihadist purposes?

05:05:05 **1** MR. SOFER: Objection.

05:05:06 **2** THE COURT: I agree. I don't see what this has to

-08:-36:00 **3** do with anything.

05:05:09 **4** MR. BOSS: We can move on.

-08:-36:00 **5** (Video played.)

05:11:59 **6** MR. BOSS: Just a touch further, please. There.

05:12:11 **7** BY MR. BOSS:

-08:-36:00 **8** Q. Mr. Griffin, at that last phrase you said that how much

-08:-36:00 **9** time we're gonna have is -- when we want to get together again,

-08:-36:00 **10** we'll meet one more time after this. Where we sit down and,

05:12:28 **11** uh, we'll check one more time for other brothers. And, God

-08:-36:00 **12** willing, we'll sit down next week.

05:12:36 **13** It didn't happen, did it?

05:12:38 **14** A. It did not.

05:12:40 **15** Q. And that was the next week where you were going to

05:12:46 **16** formalize everything?

-08:-36:00 **17** A. Gather more information.

05:12:50 **18** Q. And so this is the dinner meeting where it was the one

-08:-36:00 **19** and only time that you brought all three of these men together?

-08:-36:00 **20** A. Yes, sir.

05:13:01 **21** Q. And they didn't get together with you thereafter?

05:13:04 **22** A. All three of them together at the same time?

-08:-36:00 **23** Q. With you.

-08:-36:00 **24** A. No.

05:13:08 **25** Q. But you encouraged them to do so, didn't you?

05:13:11 **1** A. At least one more time.

05:13:13 **2** Q. And Mr. El-Hindi never agreed to do so, did he?

05:13:17 **3** A. Another time?

-08:-36:00 **4** Q. Yes.

05:13:19 **5** A. I can't recall.

05:13:24 **6** MR. BOSS: We'll continue as soon as everyone's

05:13:27 **7** ready.

05:13:32 **8** THE COURT: Sorry about that.

-08:-36:00 **9** MR. BOSS: Everyone was not ready.

05:13:38 **10** THE COURT: Go ahead.

05:13:52 **11** (Video played.)

05:19:02 **12** BY MR. BOSS:

05:19:07 **13** Q. Now, that last minute or two started with a sequence

-08:-36:00 **14** where you brought up we're going to learn sniper training, too,

-08:-36:00 **15** though. You introduced a concept there of sniper training?

05:19:23 **16** A. Yeah, I was asked what we were going to do.

05:19:27 **17** Q. And then --

05:19:30 **18** MR. HARTMAN: Judge, objection. Move to strike.

-08:-36:00 **19** THE COURT: I agree. The jury will disregard the

05:19:36 **20** answer.

05:19:37 **21** MR. SOFER: Your Honor, may we approach for a

-08:-36:00 **22** moment?

05:19:39 **23** (Whereupon the following discussion was had at the

05:20:33 **24** bench outside the hearing of the jury:)

05:20:33 **25** MR. SOFER: Judge, I understand the basic concept.

-08:-36:00 **1** If he wants to control the witness, he can control the witness.

-08:-36:00 **2** But I hope we're not going to devolve into a situation where two

-08:-36:00 **3** lawyers are cross-examining. We don't object --

-08:-36:00 **4** THE COURT: I agree.

-08:-36:00 **5** MR. HARTMAN: Sorry about that.

05:20:36 **6** (End of sidebar.)

05:20:39 **7** THE COURT: You may continue. You may ask the

-08:-36:00 **8** question again.

05:20:43 **9** BY MR. BOSS:

-08:-36:00 **10** **Q.** Mr. Griffin, do you recall stating -- let me see if I

-08:-36:00 **11** have the same book for you.

05:21:05 **12** If you look at the February 16, 2005 transcript.

05:21:24 **13** **A.** What page, sir?

05:21:26 **14** **Q.** Page 98.

05:21:31 **15** MR. SOFER: 98?

05:21:33 **16** MR. BOSS: Yes.

05:21:38 **17** **A.** Yes, sir.

05:21:47 **18** BY MR. BOSS:

05:21:47 **19** **Q.** Let's go back to the page before that, 97.

05:21:53 **20** At the bottom of that page Mr. Amawi asks how far

-08:-36:00 **21** people stand, distance, when they fight. Do you recall that?

-08:-36:00 **22** **A.** Yes.

-08:-36:00 **23** **Q.** And your answer was: When they fight, if you're going

-08:-36:00 **24** in urban contact, or c-o-n-t, just imagine fighting here in this

-08:-36:00 **25** place here. That's possibly where you could find yourself

-08:-36:00 **1** because that's where we're going to be. That's one of the
-08:-36:00 **2** things I think we're -- I think -- that's where -- that's what's
-08:-36:00 **3** going on right now in Iraq. It's house to house, block to
05:22:25 **4** block.
-08:-36:00 **5** Then Mr. Amawi says in response: Uh-huh. Yeah.
05:22:29 **6** But the range is really important when you're shooting.
-08:-36:00 **7** And your response is: Yes, but see, what we're
05:22:37 **8** going to do -- see, what we're gonna do is going to be more --
-08:-36:00 **9** yeah, we're going to learn sniper training to the --
05:22:47 **10** You introduced that topic of sniper training at
-08:-36:00 **11** that point; is that correct?
05:22:53 **12** A. Yes and no.
05:22:55 **13** Q. Now, later, if you go to page 99, at the bottom or
05:23:07 **14** toward the bottom, you again now talk about: Weather
-08:-36:00 **15** permitting, though, we'll do snipe -- the sniper thing because
-08:-36:00 **16** we need to shoot long distances.
-08:-36:00 **17** And Mr. El-Hindi said: The most -- the most
-08:-36:00 **18** important -- is the most important.
05:23:28 **19** Now, Mr. El-Hindi never went with you to do any
-08:-36:00 **20** sniper training, did he?
-08:-36:00 **21** A. He did not.
05:23:34 **22** Q. You interacted with Mr. El-Hindi for a year, just about
-08:-36:00 **23** a year after this, or there was a year of time that passed after
-08:-36:00 **24** this until the indictment approximately?
-08:-36:00 **25** A. Yes, sir.

05:23:49 **1** Q. And at no time did Mr. El-Hindi secure any weapons for
-08:-36:00 **2** any sniper training?
-08:-36:00 **3** A. No, not that I know of.
-08:-36:00 **4** Q. Didn't ask you for any sniper training, correct? Other
-08:-36:00 **5** than this instance right here where we're talking about, did he
-08:-36:00 **6** ever ask you for any sniper training?
-08:-36:00 **7** A. I can't recall, sir.
-08:-36:00 **8** Q. And in response to this, after he says the most -- most
-08:-36:00 **9** important, the next thing he -- that's said by you: And I
05:24:19 **10** think, like I said, I think you'll be really good. Amawi said:
05:24:23 **11** God willing. You say: You'll be really good at sniper.
-08:-36:00 **12** Mohammad can really shoot good. Went to the range, so maybe
05:24:33 **13** Monday. Me and you go to the range, then, or something.
05:24:38 **14** There's an inaudible by Mr. Amawi. Then you say: Me, you, and
-08:-36:00 **15** Marwan.
-08:-36:00 **16** Now, you're suggesting that Marwan go to sniper
05:24:48 **17** training with you in that phrase; isn't that what that means:
-08:-36:00 **18** You, me, and Marwan?
-08:-36:00 **19** A. No. It says we're going to go to Cleland's range.
05:24:56 **20** Q. Just above that, sir. Let's go to page 100 at the top.
-08:-36:00 **21** A. Yes, I'm there.
05:25:05 **22** MR. BOSS: May I approach?
05:25:08 **23** THE COURT: Sure.
05:25:09 **24** THE WITNESS: I can read.
05:25:11 **25** MR. BOSS: Right here, sir.

05:25:15 **1** A. Your question was I'm --

-08:-36:00 **2** BY MR. BOSS:

-08:-36:00 **3** Q. You say: Maybe Monday -- at the very top of the page --

05:25:23 **4** me, you -- me and you go to the range then, or something.

05:25:28 **5** There's an inaudible by Mr. Amawi.

-08:-36:00 **6** Then you say: Me, you, and Marwan?

05:25:33 **7** A. Yes.

05:25:34 **8** Q. You were the one suggesting that Marwan go do some

05:25:37 **9** sniper training at that point; isn't that correct?

-08:-36:00 **10** A. No, I was suggesting that he go to Cleland's range.

-08:-36:00 **11** Q. And Marwan did not go with you to Cleland's range, did

-08:-36:00 **12** he?

-08:-36:00 **13** A. No, sir.

05:25:47 **14** Q. Not then or ever; isn't that correct?

05:25:49 **15** A. Correct, sir.

05:25:55 **16** Q. And Marwan didn't go overseas with you?

-08:-36:00 **17** A. He did not.

05:26:02 **18** MR. BOSS: If everyone would be prepared, we'll

-08:-36:00 **19** resume the recording.

05:26:08 **20** (Video played.)

05:32:35 **21** MR. BOSS: Is that where the video ends, Mr. Hess?

-08:-36:00 **22** MR. HESS: Yes.

05:32:42 **23** BY MR. BOSS:

05:32:43 **24** Q. Apparently that's where the video ends.

05:32:46 **25** Now, were you reading along the Arabic text while

05:32:51 **1** the other individuals there were engaged in conversation with
-08:-36:00 **2** you or with -- amongst themselves without you participating
-08:-36:00 **3** there?

05:33:00 **4** **A.** Yes, sir.

05:33:05 **5** **Q.** Did you notice none of the conversation was about
-08:-36:00 **6** training for Jihad?

-08:-36:00 **7** **MR. SOFER:** Objection, Your Honor.

-08:-36:00 **8** **THE COURT:** I'll let him answer.

05:33:17 **9** **A.** Partly, yes.

05:33:19 **10** **BY MR. BOSS:**

05:33:19 **11** **Q.** And your interaction with them during this time, this
-08:-36:00 **12** dinner meeting, was going well beyond gathering information,
05:33:28 **13** wasn't it?

05:33:29 **14** **A.** I don't believe so.

05:33:32 **15** **Q.** You don't think that you were being a bit proactive
-08:-36:00 **16** there?

05:33:37 **17** **A.** That's gathering information also.

05:33:41 **18** **THE COURT:** I didn't hear the last word or two.

05:33:44 **19** **THE WITNESS:** That's gathering information also.

05:33:47 **20** **BY MR. BOSS:**

05:33:47 **21** **Q.** Do you think that these various suggestions you were
-08:-36:00 **22** making were just gathering information?

05:33:52 **23** **A.** Yes, sir.

-08:-36:00 **24** **Q.** How about the manipulation, such as bringing up verses
-08:-36:00 **25** of the Qur'an and citing obligations. Was that just gathering

- 08:-36:00 **1** information?
- 05:34:04 **2** **A.** I didn't quote any Qur'an there.
- 05:34:09 **3** **Q.** I thought the -- okay. When you were leading them to
- 05:34:12 **4** different things, that's just gathering information?
- 05:34:17 **5** **A.** All I was doing was recommending and suggesting and
- 05:34:22 **6** seeing what their reaction would be.
- 08:-36:00 **7** **Q.** Kind of fishing?
- 05:34:27 **8** **A.** Maybe in some ways, yes.
- 08:-36:00 **9** **Q.** Inflaming their passions occasionally?
- 08:-36:00 **10** **A.** No.
- 05:34:38 **11** **Q.** Well, now, after this dinner meeting that was on the
- 08:-36:00 **12** video, the party adjourned to another room where there was a
- 05:34:49 **13** computer?
- 08:-36:00 **14** **A.** Yes, sir.
- 05:34:50 **15** **Q.** Whose suggestion was that?
- 05:34:53 **16** **A.** I can't recall.
- 08:-36:00 **17** **Q.** When you went back there, did you type on the computer
- 08:-36:00 **18** at all?
- 08:-36:00 **19** **A.** I don't believe so.
- 05:34:59 **20** **Q.** Did Mr. El-Hindi do it?
- 05:35:02 **21** **A.** It being his house, I would think so.
- 08:-36:00 **22** **Q.** But you don't remember?
- 05:35:07 **23** **A.** Not directly.
- 05:35:09 **24** **Q.** Of the -- Mr. El-Hindi was not highly skilled with his
- 05:35:15 **25** computer use; is that correct?

05:35:17 **1** A. Whatever your term of highly skilled is.

-08:-36:00 **2** Q. He was having computer problems, wasn't he?

-08:-36:00 **3** A. He couldn't network them together.

05:35:31 **4** Q. I'd like to take you back in time now a little bit

-08:-36:00 **5** before this dinner meeting. I'd like to have you recall now

05:35:40 **6** February 8th, 2005. If you'd like, you're welcome to use your

05:35:49 **7** reference guide.

05:35:57 **8** THE COURT: About how long is this segment?

-08:-36:00 **9** MR. BOSS: Judge, I believe that we will be

-08:-36:00 **10** playing -- do you recall how many segments?

05:36:06 **11** MR. HARTMAN: Six minutes and 13 seconds.

05:36:10 **12** THE COURT: I have a 2:15 conference call.

05:36:13 **13** MR. BOSS: 2:15, Judge?

05:36:15 **14** THE COURT: How long are your questions?

-08:-36:00 **15** MR. BOSS: I think we'll need to break now.

-08:-36:00 **16** THE COURT: Ladies and gentlemen, I'm very sorry.

05:36:23 **17** I have a conference call, an important visitor from Cleveland.

05:36:31 **18** MR. SOFER: How long, Judge?

05:36:35 **19** THE COURT: It's scheduled from 2:15 to 2:45. I

-08:-36:00 **20** will try to leave by 2:30 if at all possible.

05:41:30 **21** (Recess taken.)

06:06:48 **22** THE COURT: Mr. Griffin, you remain under oath.

06:06:55 **23** You may resume.

06:07:31 **24** MR. BOSS: Thank you, Judge.

06:07:31 **25** BY MR. BOSS:

-08:-36:00 **1** Q. Mr. Griffin, I was about to direct your attention to
-08:-36:00 **2** February 8, 2005, some several days before the dinner meeting,
-08:-36:00 **3** eight days before the meeting that we just watched the videotape
06:07:48 **4** of. On that day you went to Marwan El-Hindi's house; isn't
-08:-36:00 **5** that correct?
06:07:53 **6** A. If that's what the transcript says.
06:07:56 **7** Q. Feel free to look at your reference guide, too. I
-08:-36:00 **8** think that that would help as well.
06:08:05 **9** A. Yes.
06:08:07 **10** Q. And do you recall that the two of you got onto the
-08:-36:00 **11** internet at that point when you were there?
-08:-36:00 **12** A. I believe so.
-08:-36:00 **13** Q. And that's a computer access to the Worldwide Web and so
06:08:18 **14** forth, the internet?
-08:-36:00 **15** A. Yes.
06:08:22 **16** Q. And feel free to refresh your recollection. I provided
-08:-36:00 **17** you with a copy of ID-7. That's a transcript of the recording
-08:-36:00 **18** you made on February 8, 2005?
-08:-36:00 **19** A. Yes, sir.
-08:-36:00 **20** Q. And on pages 8 and 9, have you had a chance to review
-08:-36:00 **21** those moments ago?
-08:-36:00 **22** A. No. I'm sorry.
06:08:43 **23** Q. Feel free to do so.
06:09:28 **24** A. Yes.
06:09:29 **25** Q. You testified in your direct examination about visiting

-08:-36:00 **1** a website with Marwan El-Hindi, and Marwan, we heard on the

06:09:40 **2** tape -- or you asked Marwan -- I apologize -- if they were

-08:-36:00 **3** taking applications for fighters. Didn't you ask him that?

-08:-36:00 **4** **A.** Yes, sir.

-08:-36:00 **5** **Q.** And his answer to you was, no. Isn't that correct?

06:10:04 **6** This would be on page 9, sir.

-08:-36:00 **7** You said to him, in the middle: Yeah, he's already

06:10:21 **8** injured. It's okay. What else are they taking applications

-08:-36:00 **9** for, for actual fighters?

06:10:27 **10** And his response to you was: No. No -- or not no.

-08:-36:00 **11** I didn't say that. They're saying that they, uh, from the way

-08:-36:00 **12** I understand it, they don't need fighters.

06:10:37 **13** That's what Mr. El-Hindi's response was to you,

-08:-36:00 **14** correct?

-08:-36:00 **15** **A.** You're correct. I'm sorry.

-08:-36:00 **16** **Q.** And he referred you to or you said: Yeah, that's what

06:10:46 **17** they were saying and communicating on number 6.

-08:-36:00 **18** That's what you said to Mr. El-Hindi?

06:10:51 **19** **A.** Yes.

-08:-36:00 **20** **Q.** Communiqué Number 6 was something you had reviewed with

06:10:56 **21** one or more of the defendants?

-08:-36:00 **22** **A.** No, that's once again -- yes. Yes.

-08:-36:00 **23** **Q.** And Communiqué Number 6, it said: We don't need

-08:-36:00 **24** fighters; we need to educate people?

-08:-36:00 **25** **A.** Yes. We watched that here, actually.

-08:-36:00 **1** Q. And Mr. El-Hindi said in response: Yes, they -- they
-08:-36:00 **2** very, very -- all they need is support from the outside to
06:11:16 **3** educate people.

-08:-36:00 **4** Isn't that what he said?

06:11:18 **5** A. Yes, sir.

06:11:25 **6** Q. After that you said that's what you and Mohammad were
06:11:29 **7** going to do, didn't you?

-08:-36:00 **8** A. Yes, sir.

-08:-36:00 **9** Q. And that was the day you said Marwan gave you
06:11:34 **10** Government's Exhibit 61. Do you recall that?

-08:-36:00 **11** A. Could you refresh my --

06:11:41 **12** Q. Please feel free to use your reference guide. I

-08:-36:00 **13** believe it's under your book.

06:11:48 **14** A. Could you show me the actual --

-08:-36:00 **15** Q. I'd be happy to do so. It's a two-page document which I

-08:-36:00 **16** believe is not the original; is that correct?

06:12:11 **17** A. It doesn't look like the original.

06:12:14 **18** Q. Do you recognize that now? Does that help you recall?

-08:-36:00 **19** A. Yes, sir.

-08:-36:00 **20** Q. Am I correct that your testimony was that you received

06:12:20 **21** that document 61, and you -- from Marwan El-Hindi?

06:12:26 **22** A. On the 8th, yes, sir.

-08:-36:00 **23** Q. On the 8th?

-08:-36:00 **24** A. I believe so.

-08:-36:00 **25** Q. How did you get it from him?

06:12:31 **1** A. He handed it to me.

06:12:33 **2** Q. Which hand did he use?

-08:-36:00 **3** A. I don't know, sir.

-08:-36:00 **4** Q. I mean, did he simply print it out of the printer, and

-08:-36:00 **5** you took it out of the printer, or did he have it and hand it to

-08:-36:00 **6** you?

-08:-36:00 **7** A. He handed it to me. Actually, in the actual recording

06:12:48 **8** he had it in his hands, and he points, and he states: Look

06:12:53 **9** who -- who did this. And he pointed in the corner to Bilal.

-08:-36:00 **10** And he handed it to me after that.

06:13:00 **11** Q. So he had it in his fingers, and he handed it to you?

-08:-36:00 **12** A. Yes.

06:13:04 **13** Q. Then you took that document, and you turned it over to

06:13:11 **14** your FBI handler later saying this is what Mr. El-Hindi gave

-08:-36:00 **15** you?

-08:-36:00 **16** A. Yes, sir.

-08:-36:00 **17** Q. And that ended up getting -- I believe I'm led to

-08:-36:00 **18** believe it was scanned in ultimately to an electronic format,

-08:-36:00 **19** but our original is missing. Fair to say?

-08:-36:00 **20** MR. SOFER: Objection, Judge.

-08:-36:00 **21** BY MR. BOSS:

-08:-36:00 **22** Q. Do you know if the original is still in existence?

-08:-36:00 **23** THE COURT: I agree.

-08:-36:00 **24** BY MR. BOSS:

-08:-36:00 **25** Q. Do you know if the original is in existence, Mr.

-08:-36:00 **1** Griffin?

-08:-36:00 **2** A. No, I do not.

-08:-36:00 **3** Q. But that is not the original; is that correct? It has

-08:-36:00 **4** some other identifying information on it?

-08:-36:00 **5** A. Yes. It was bigger.

06:13:47 **6** THE COURT: Is it a duplicate of what you were

-08:-36:00 **7** handed, so far as you are aware?

06:13:51 **8** THE WITNESS: Yes, sir. Yes, Your Honor.

06:13:58 **9** BY MR. BOSS:

06:13:58 **10** Q. Mr. Griffin, am I correct it is a duplicate except for

-08:-36:00 **11** some of the printing at the top and otherwise that would not

-08:-36:00 **12** have been part of the original document?

06:14:08 **13** A. You mean as far as right off the Arabic?

-08:-36:00 **14** Q. Yes, sir.

-08:-36:00 **15** A. Yes, sir.

-08:-36:00 **16** Q. That appears to be from whatever the duplicating process

06:14:17 **17** was?

06:14:18 **18** A. Whatever the process.

06:15:10 **19** MR. BOSS: Your Honor, the government has

-08:-36:00 **20** previously prepared a translation of Exhibit 61 which they

06:15:18 **21** marked as Government's Exhibit 61A. The parties are in

-08:-36:00 **22** agreement that we would like to stipulate to its admissibility

06:15:25 **23** and enter it into evidence.

06:15:27 **24** MR. SOFER: As a fair and accurate translation,

06:15:30 **25** Your Honor.

06:15:32 **1** MR. BOSS: As a fair and accurate translation of
06:15:35 **2** 61.
06:15:36 **3** THE COURT: Okay.
06:15:38 **4** BY MR. BOSS:
06:15:39 **5** Q. Mr. Griffin, I have a couple further questions for you
06:15:43 **6** about Exhibit 61. On the day that Mr. El-Hindi was -- you say
-08:-36:00 **7** he gave that to you, you and Marwan didn't visit that website
06:16:03 **8** that day, did you, from Marwan's computer?
06:16:11 **9** A. I can't recall, sir.
06:16:21 **10** Q. And I believe you had testified on direct examination
06:16:25 **11** that it was your understanding that the document would have been
-08:-36:00 **12** printed on February 5, 2005; is that correct?
06:16:35 **13** A. There's a date of February 5, 2005.
-08:-36:00 **14** Q. At the bottom?
-08:-36:00 **15** A. Yes, sir.
-08:-36:00 **16** Q. You're familiar enough with computers to know if you
-08:-36:00 **17** print something out, it comes automatically with a date; is that
-08:-36:00 **18** why you presume that to be the date it was printed?
-08:-36:00 **19** A. Yeah.
06:16:54 **20** Q. Now, you've gone on that website on your own before,
-08:-36:00 **21** hadn't you?
06:16:59 **22** A. I may have.
06:17:01 **23** Q. Is that a yes?
06:17:08 **24** A. I'd be guessing if I did, but yes.
06:17:18 **25** Q. Now, on the day that Government's Exhibit 61 was

06:17:21 **1** printed, the registration for that site was open; isn't that

-08:-36:00 **2** correct?

06:17:26 **3** **A.** Say that again.

06:17:27 **4** **Q.** Well, the date that that Government's Exhibit 61 was

-08:-36:00 **5** printed out was an open registration date for that website; is

06:17:37 **6** that correct?

06:17:37 **7** **A.** Now you're going past my ability to answer.

06:17:44 **8** **Q.** Let me hand you what's been marked as Exhibit 61A.

06:17:48 **9** This is the translation.

06:17:51 **10** MR. HARTMAN: Chuck, you might want to use the

-08:-36:00 **11** ELMO.

06:17:57 **12** MR. BOSS: I'll try to use the ELMO.

06:18:44 **13** BY MR. BOSS:

06:18:44 **14** **Q.** Do you recall discussing with Mr. El-Hindi the fact that

06:18:48 **15** the registration was open at that time?

06:18:50 **16** **A.** I can't recall, sir.

06:19:05 **17** **Q.** Did Mr. El-Hindi read to you: In the name of God most

06:19:10 **18** merciful, the most gracious. Announcement: Opening the

06:19:17 **19** registration. We have reopened the registration in the forums

-08:-36:00 **20** again and for a temporary period based on your requests. We

-08:-36:00 **21** also note that all memberships not used by their owners will be

06:19:34 **22** cancelled in a maximum period of three days.

-08:-36:00 **23** Did Mr. El-Hindi translate that for you, or did you

-08:-36:00 **24** know that?

-08:-36:00 **25** **A.** I didn't know that.

06:19:42 **1** THE COURT: I did not hear you.

-08:-36:00 **2** THE WITNESS: I did not know this.

06:19:46 **3** BY MR. BOSS:

06:19:46 **4** Q. But you had been to that website before?

06:19:51 **5** A. Probably -- after the fact, I believe.

06:20:02 **6** Q. On this translation, as on Exhibit 61, there is a box.

06:20:12 **7** Let's see if I can attempt to use this thing. There is a box

-08:-36:00 **8** that says "User name" on it; isn't there?

06:20:35 **9** A. On 61?

-08:-36:00 **10** Q. Yes, sir.

-08:-36:00 **11** A. Yes, seeing the translation. I mean, this is the first

06:20:40 **12** time I'm seeing the translation of it, so --

06:20:45 **13** Q. It says user name rather than having a user's name; is

-08:-36:00 **14** that correct?

-08:-36:00 **15** MR. SOFER: Your Honor, actually, the witness

06:20:51 **16** brings up a good point. How can -- I don't understand how one

-08:-36:00 **17** can cross him with this document which he would not have

06:20:58 **18** understood at the time.

06:21:05 **19** THE COURT: And, Mr. Boss, you're going to connect

-08:-36:00 **20** all this up?

-08:-36:00 **21** MR. BOSS: Yes, sir.

06:21:11 **22** THE COURT: I'll let you continue.

06:21:14 **23** MR. BOSS: Does the government have a more legible

06:21:17 **24** copy?

06:21:18 **25** MR. SOFER: We can try putting it up on our screen.

-08:-36:00 **1** MR. BOSS: That would be fine.

06:21:39 **2** (Document displayed.)

-08:-36:00 **3** MR. BOSS: This is the translation.

-08:-36:00 **4** Can we go back to 61?

06:21:50 **5** It doesn't look much more legible.

06:21:58 **6** BY MR. BOSS:

-08:-36:00 **7** Q. Mr. Griffin, to your knowledge, was there a user name of

06:22:01 **8** Marwan El-Hindi inserted into Government's Exhibit 61?

06:22:10 **9** A. You mean that Arabic that's in there?

06:22:13 **10** Q. Yes.

06:22:17 **11** A. From my Arabic, I don't think that's Marwan El-Hindi.

06:22:23 **12** Q. And was there a password inserted in the box just below

-08:-36:00 **13** that under "password"?

06:22:29 **14** A. It looks blank to me.

06:22:35 **15** Q. And did Marwan El-Hindi give you a password?

06:22:38 **16** A. He did not.

06:22:39 **17** Q. He did not. Did he give you a user name?

-08:-36:00 **18** A. He did not.

06:22:50 **19** MR. SOFER: Can we ask when, Your Honor, we're

-08:-36:00 **20** talking about here?

-08:-36:00 **21** THE COURT: That's fair.

06:22:56 **22** BY MR. BOSS:

-08:-36:00 **23** Q. On February 8, 2005.

-08:-36:00 **24** A. Not that I can recall.

06:23:00 **25** Q. Did he thereafter?

06:23:02 **1** A. I know I kept asking him for one, but I just can't
-08:-36:00 **2** remember right now. I don't think so. I mean, some video --
06:23:14 **3** Q. Fair enough.
06:23:17 **4** THE COURT: I couldn't hear the last thing that you
-08:-36:00 **5** said.
06:23:20 **6** THE WITNESS: I just said if they had something
-08:-36:00 **7** that could recall my memory, Your Honor.
06:23:31 **8** BY MR. BOSS:
06:23:31 **9** Q. But you don't remember him giving you a user name or
06:23:34 **10** password at any time for that website; isn't that true?
-08:-36:00 **11** A. I don't recall, sir.
06:23:43 **12** Q. Now, do you remember asking Marwan El-Hindi on that day,
-08:-36:00 **13** while he was on the computer, if he wanted you to read him
-08:-36:00 **14** something?
06:23:54 **15** A. No, I can't remember.
06:24:17 **16** Q. Mr. Griffin, I'll take that exhibit back from you, then
06:24:21 **17** move on.
06:24:25 **18** MR. BOSS: Thank you for the assistance.
06:24:43 **19** Your Honor, by agreement with the government, we
-08:-36:00 **20** would like to play a clip that has been previously played with a
06:24:53 **21** correction to the transcript.
-08:-36:00 **22** THE COURT: Okay.
-08:-36:00 **23** MR. SOFER: It's Government's Exhibit 4-75. 1D-7.
-08:-36:00 **24** It's a portion, I believe, of --
06:25:07 **25** MR. HARTMAN: If I may, Judge, we each found a

-08:-36:00 **1** little error that we wanted to correct for the jury. We're not
-08:-36:00 **2** going to play the whole thing. It's six minutes, but we agreed
06:25:16 **3** to replay it with the government.
06:25:18 **4** THE JUROR: Could I have that number again?
06:25:20 **5** MR. SOFER: 4-75 is the Government's Exhibit 1D-7,
06:25:24 **6** February 8, 2005.
06:30:30 **7** (Video played.)
06:30:30 **8** MR. BOSS: Could we stop it there. I apologize.
06:30:33 **9** Let's continue to the end, then I'll come back. I'm sorry.
06:30:41 **10** (Video played.)
06:33:28 **11** (Discussion had off the record.)
06:33:31 **12** MR. BOSS: Would you be so kind to pull up
06:33:35 **13** Government's Exhibit 61 again, the second page. And if you
-08:-36:00 **14** could, I'd ask that you highlight this portion here, the page.
-08:-36:00 **15** Are you able to do that? Thank you. It's kind of hard to
-08:-36:00 **16** see. Let's try 61A. It may be a darker translation.
-08:-36:00 **17** BY MR. BOSS:
06:34:29 **18**
06:34:29 **19** Q. Mr. Griffin, the transcript we just saw was corrected
-08:-36:00 **20** from the original version that was played earlier in your direct
06:34:38 **21** examination?
-08:-36:00 **22** A. Yes, sir.
06:34:39 **23** Q. I'd like to hand you page 50 of 56. Now, in that
-08:-36:00 **24** transcript that we just heard, you say: Want me to read it off
06:35:05 **25** to you? Correct?

- 08:-36:00 **1** A. Yes, sir.
- 06:35:09 **2** Q. Then, indeed, you read off 059. Is that right?
- 08:-36:00 **3** A. Yes, sir.
- 06:35:19 **4** Q. I'm looking at this page from Exhibit 61 where it says,
- 06:35:25 **5** and our highlighted portion on the screen,
- 08:-36:00 **6** <http://wasan.DDO.JP/up/IMG/059.ZIP>.
- 06:35:47 **7** 059, is that the 059 you were reading off in this
- 06:35:51 **8** transcript?
- 08:-36:00 **9** A. Quite possibly.
- 06:35:53 **10** Q. You don't recall?
- 08:-36:00 **11** A. I mean, if I didn't have a video recorder, if I was
- 08:-36:00 **12** seeing something, I'd try to say what I was seeing.
- 06:36:05 **13** Q. So you have no reason to believe it was any document
- 08:-36:00 **14** other than Exhibit 61 that you say Mr. El-Hindi gave you, that
- 08:-36:00 **15** you say Mr. El-Hindi gave you that day, right?
- 06:36:17 **16** A. Yes, sir.
- 08:-36:00 **17** Q. And you are standing behind him or next to him on the
- 06:36:21 **18** computer?
- 08:-36:00 **19** A. Next to him.
- 06:36:23 **20** Q. And you are reading to him what you want him to type in
- 08:-36:00 **21** there; is that correct?
- 06:36:27 **22** A. I believe I just read that, 059. I was either holding
- 08:-36:00 **23** the paper, but he was reading off. It's obvious from the last
- 08:-36:00 **24** clip.
- 08:-36:00 **25** Q. And you're getting him to type that into the computer at

-08:-36:00 **1** that point?

-08:-36:00 **2** **A.** He started, and when I asked, do you want me to read it

06:36:47 **3** off to you, I was just, you know, facilitating him.

-08:-36:00 **4** **Q.** Facilitating him to?

-08:-36:00 **5** **A.** Help. He was already typing.

06:36:58 **6** **Q.** Fair enough.

06:37:34 **7** MR. BOSS: Thank you.

06:37:36 **8** BY MR. BOSS:

06:37:37 **9** **Q.** Mr. Griffin, I'll take that other transcript piece from

-08:-36:00 **10** you. Thank you.

06:37:43 **11** And I'd like to direct your attention to February

06:37:46 **12** 25, 2005. Now, this is after the dinner meeting?

06:37:51 **13** **A.** Yes, sir.

06:38:04 **14** **Q.** Now, yesterday I asked you if you had ever -- if you

06:38:08 **15** ever did any training with Mr. El-Hindi, and you said the only

-08:-36:00 **16** thing that you considered training was that on February 20th --

-08:-36:00 **17** February 20th or 25th, when you were watching the video or

-08:-36:00 **18** looking at pictures of an IED attack, and he asked you if an IED

-08:-36:00 **19** can penetrate an Army humvee. Do you remember that?

-08:-36:00 **20** MR. SOFER: I don't believe that's an accurate

06:38:38 **21** description of what the witness said. I believe he said that's

-08:-36:00 **22** all he can recall.

-08:-36:00 **23** BY MR. BOSS:

-08:-36:00 **24** **Q.** Do you recall?

-08:-36:00 **25** **A.** Yes, that's the best that I can recall.

-08:-36:00 **1** Q. Now, he didn't really ask you -- didn't he really ask
-08:-36:00 **2** you: Aren't military trucks stronger than an RGB?
06:38:54 **3** A. I believe he did.
06:38:59 **4** THE COURT: I didn't hear your answer.
-08:-36:00 **5** THE WITNESS: I believe he did, Your Honor.
-08:-36:00 **6** Sorry.
06:39:10 **7** BY MR. BOSS:
06:39:10 **8** Q. But what you were actually looking at were a series of
06:39:15 **9** photographs depicting an IED attack; is that correct?
-08:-36:00 **10** A. Yes.
06:39:19 **11** Q. Now, there were actually two devices in that series of
06:39:23 **12** photographs. One of them exploded and one of them didn't,
06:39:26 **13** correct?
-08:-36:00 **14** A. Yes, sir.
06:39:28 **15** Q. Now, isn't it also true that the text on those pictures,
-08:-36:00 **16** those photographs, that this just as likely could have been to
-08:-36:00 **17** learn how to detect and avoid an IED as to how to attack with
-08:-36:00 **18** one?
06:39:57 **19** A. I'd say no.
-08:-36:00 **20** Q. That's for the jury to decide. But you asked Marwan
-08:-36:00 **21** El-Hindi to e-mail that to you, didn't you?
-08:-36:00 **22** A. Yes, sir.
06:40:07 **23** Q. And he didn't just do that himself; isn't that correct?
06:40:12 **24** You asked him to do so?
-08:-36:00 **25** A. Yes, sir.

06:40:16 **1** Q. And when you asked him to send you that e-mail, you

06:40:20 **2** didn't tell him what you intended to do with it, did you?

06:40:27 **3** A. I think I said to use it for training.

06:40:33 **4** Q. I believe you may have a transcript there for February
06:40:37 **5** 25, 2005.

06:40:38 **6** A. I do not, sir.

06:40:45 **7** MR. BOSS: I'm sorry. For the record, that

-08:-36:00 **8** transcript and exhibit was from case 69440, CV ID -- or 1D-10.

06:41:50 **9** MR. SOFER: Government's Exhibit 4-78, Your Honor.

06:41:53 **10** THE COURT: Thank you.

06:41:55 **11** A. What page would you like me to refer to?

-08:-36:00 **12** BY MR. BOSS:

-08:-36:00 **13** Q. Take a look at page 45, please.

06:42:20 **14** A. Yes, sir.

-08:-36:00 **15** Q. Now, you said to Mr. El-Hindi: Yeah, right, huh,

06:42:26 **16** e-mail --

06:42:28 **17** THE COURT: I can't hear you. Speak a little more

-08:-36:00 **18** clearly and a little slower.

-08:-36:00 **19** MR. BOSS: I apologize.

06:42:35 **20** BY MR. BOSS:

06:42:35 **21** Q. You said to Mr. El-Hindi in the middle of the page:

06:42:39 **22** Yeah, that's right. Huh. E-mail me that, my brother.

-08:-36:00 **23** Isn't that correct?

06:42:49 **24** A. On page 45?

06:42:52 **25** Q. I believe so.

06:42:53 **1** A. It's page 44.

06:42:56 **2** Q. Different pagination. I'm sorry.

06:42:59 **3** A. Yes, I did say that, sir.

06:43:03 **4** Q. And Mr. El-Hindi, you did not tell him it was for

-08:-36:00 **5** training at that point, did you?

06:43:21 **6** A. Not on that page, sir, no.

06:43:25 **7** Q. And you also told Marwan --

06:43:28 **8** MR. SOFER: Can we approach, Judge?

06:43:31 **9** THE COURT: Sure.

06:43:32 **10** (Whereupon the following discussion was had at the

06:44:50 **11** bench outside the hearing of the jury:)

06:44:50 **12** MR. SOFER: He can do this if he wants, but if you

-08:-36:00 **13** look two pages before on this exact same transcript, I think

-08:-36:00 **14** what's being done here is highly improper. You can do it

-08:-36:00 **15** however you want. I'm obviously going to have a response on

-08:-36:00 **16** rebuttal, but I would just say, I object to the nature of this

-08:-36:00 **17** kind of questioning under the circumstances when two pages

-08:-36:00 **18** before in the same exact transcript this is all laid out very

-08:-36:00 **19** clearly. I could wait and handle it myself. But --

-08:-36:00 **20** THE COURT: Whatever. It's up to you guys.

-08:-36:00 **21** (End of side-bar discussion.)

06:45:05 **22** MR. HARTMAN: Judge, can we have one minute?

06:45:09 **23** THE COURT: Of course.

06:45:10 **24** (Discussion had off the record.)

06:45:30 **25** BY MR. BOSS:

-08:-36:00 **1** Q. Mr. Griffin, as I understood your answer, you were

06:45:33 **2** saying at some point you told him it was for training?

06:45:36 **3** A. Throughout all this when we were talking about the

06:45:40 **4** computer and gathering materials, you know, I would definitely

06:45:46 **5** say it's for training, yes.

-08:-36:00 **6** Q. Well, I'd like now to direct your attention to a later

-08:-36:00 **7** date, quite some time down the road, January 31 of 2006. Now,

-08:-36:00 **8** this is about two weeks before the indictment in this case.

-08:-36:00 **9** You need not -- or I have a transcript for you here. There's

-08:-36:00 **10** not one in your book.

06:46:13 **11** A. There's a tab. Sorry.

-08:-36:00 **12** Q. That's about two weeks before the indictment in this

-08:-36:00 **13** case; isn't that correct?

06:46:19 **14** A. I guess.

06:46:20 **15** Q. You hadn't seen Mr. El-Hindi for quite some time, true?

-08:-36:00 **16** A. I believe it was documented the last time.

06:46:29 **17** Q. Do you recall?

06:46:31 **18** THE COURT: Was it before Christmas, before

06:46:34 **19** Thanksgiving, after the New Year's, after Dr. King's holiday?

-08:-36:00 **20** If you recall. I'm just trying to fix a general time frame.

-08:-36:00 **21** But if it doesn't work, that's fine.

06:46:49 **22** THE WITNESS: The only time I can recall, Your

-08:-36:00 **23** Honor, was after the first trip from Jordan. I can't recall

06:46:57 **24** exactly what day.

-08:-36:00 **25** THE COURT: When did you return from that?

06:47:01 **1** THE WITNESS: I returned from the first trip from
06:47:04 **2** Jordan on September 8.
06:47:06 **3** THE COURT: When was the second trip to Jordan?
06:47:10 **4** THE WITNESS: The second trip was December 13.
-08:-36:00 **5** THE COURT: So it would have been in that time
06:47:15 **6** frame? Good. Thank you.
06:47:17 **7** MR. BOSS: Thank you, Judge.
06:47:25 **8** BY MR. BOSS:
-08:-36:00 **9** Q. Mr. Griffin, we've got another transcript for you. This
-08:-36:00 **10** is from January 31, 2006. And it is our tape Number 1D-116.
06:47:50 **11** Do you recall whether there was any talk between
06:47:53 **12** you and Marwan El-Hindi of Jihad on that day when you met him?
06:48:00 **13** A. I can't recall, sir.
06:48:03 **14** Q. You don't specifically recall there being any talk of
06:48:07 **15** Jihad on that day when you met with him; is that correct?
-08:-36:00 **16** A. Yes, sir.
06:48:11 **17** Q. And I'd like to direct your attention to page 7 of that
06:48:15 **18** transcript. Did we highlight a portion on there for you?
-08:-36:00 **19** A. Yes.
06:48:32 **20** Q. Does that refresh your recollection about whether there
-08:-36:00 **21** were people who had been complaining about supposing -- or
-08:-36:00 **22** intending to go on a trip to the Hajj in Mecca and not being
-08:-36:00 **23** able to go, and one of them was Wassim?
06:48:51 **24** A. Yes, I remember Wassim.
06:49:00 **25** Q. And do you remember Mr. El-Hindi saying to you: 'Cause

-08:-36:00 **1** what's-his-name was supposed to go there for free, uh, Wassim.

-08:-36:00 **2** You remember Wassim? Do you remember Mr. El-Hindi saying that

-08:-36:00 **3** to you?

-08:-36:00 **4** **A.** Yes.

-08:-36:00 **5** **Q.** And your response was: Yeah, I know Wassim. I see him

06:49:16 **6** today -- or yesterday. Correct?

-08:-36:00 **7** **A.** Yes.

06:49:29 **8** **Q.** So apparently at this point in time Mr. El-Hindi didn't

06:49:33 **9** even clearly recall Wassim's name?

06:49:37 **10** **MR. SOFER:** Objection.

06:49:38 **11** **THE COURT:** Sustained. The jury will disregard

-08:-36:00 **12** that.

06:49:45 **13** **BY MR. BOSS:**

-08:-36:00 **14** **Q.** I'd like to direct your attention to the next page, page

06:49:48 **15** 8. If you could read the highlighted portion for yourself and

-08:-36:00 **16** see if that refreshes your recollection again.

06:50:24 **17** **A.** Yes, sir.

06:50:27 **18** **Q.** Now, you had been telling Mr. El-Hindi that --

06:50:30 **19** Mr. El-Hindi was complaining that he thought somebody was

-08:-36:00 **20** following him and tapping his phone?

06:50:37 **21** **A.** I state right here, it says Wassim. He said maybe

06:50:43 **22** somebody's following him; he's not sure. But, I mean, I'd have

-08:-36:00 **23** to read before, if we're referring to somebody else; or if I'm

06:50:54 **24** talking, in fact, about Wassim.

06:50:57 **25** **Q.** Whether it's Wassim or Mr. Amawi -- pardon me. Wassim

-08:-36:00 **1** said somebody's following me; he's not sure. And Mr. El-Hindi

-08:-36:00 **2** in response to that said?

-08:-36:00 **3** MR. SOFER: Objection.

06:51:11 **4** THE COURT: Disregard the "not sure" comment.

06:51:14 **5** MR. SOFER: Judge, it's hearsay.

06:51:20 **6** BY MR. BOSS:

-08:-36:00 **7** **Q.** Do you recall Marwan saying --

06:51:23 **8** MR. HARTMAN: May we approach?

06:51:26 **9** THE COURT: Maybe I missed something. Come on up.

-08:-36:00 **10** (Whereupon the following discussion was had outside

06:56:39 **11** the hearing of the jury:)

06:56:39 **12** THE COURT: The "not sure", was that an inserted

-08:-36:00 **13** aside?

-08:-36:00 **14** MR. SOFER: No.

-08:-36:00 **15** THE COURT: I misunderstood.

-08:-36:00 **16** MR. SOFER: My objection is here -- take a look at

-08:-36:00 **17** this, Judge. In a naked way like this, he can cross-examine

-08:-36:00 **18** the witness. But cross-examination of the witness --

-08:-36:00 **19** THE COURT: I tend to agree.

-08:-36:00 **20** MR. SOFER: If he wants to put this in, again,

-08:-36:00 **21** we've discussed this a lot of times. If the defense wants to

-08:-36:00 **22** put this last sentence in because they think it's helpful for

-08:-36:00 **23** their case, I understand that. I would want to do the same

-08:-36:00 **24** thing. As I've said a million times, this is not the

-08:-36:00 **25** appropriate way of doing it. Having this witness read

-08:-36:00 **1** something from a transcript, unless they have something they
-08:-36:00 **2** want to cross-examine the witness about --

-08:-36:00 **3** MR. HARTMAN: And, Judge, my thought is 8033;
-08:-36:00 **4** that's not hearsay. It's clearly not because it shows his
-08:-36:00 **5** mental state. Because of the conversation and the fact they
-08:-36:00 **6** hadn't talked to each other in so long, we're entitled to ask
-08:-36:00 **7** him if he even knew anything about it. He can look at that
-08:-36:00 **8** answer and refer to that answer to show it.

-08:-36:00 **9** MR. SOFER: It shows his mental --

-08:-36:00 **10** THE COURT: I think you can ask him: What did you
-08:-36:00 **11** understand -- what was your understanding on that date as to
-08:-36:00 **12** when Mr. El-Hindi and either Mr. Amawi or whoever you want to
-08:-36:00 **13** talk about, Mr. Mazloun had last been in contact with each
-08:-36:00 **14** other? I think that, you can ask, and see what he says. But
-08:-36:00 **15** you're right, to simply read the transcript into the record and
-08:-36:00 **16** thereby try to produce something probative --

-08:-36:00 **17** MR. BOSS: It wasn't the contact between them that
-08:-36:00 **18** was the issue, Judge.

-08:-36:00 **19** THE COURT: What am I missing?

-08:-36:00 **20** MR. HARTMAN: It was what he said about being
-08:-36:00 **21** followed or something, about his mental -- about what El-Hindi
-08:-36:00 **22** thought, his state of mind about him being followed. He says,
-08:-36:00 **23** I don't care. It's a conversation: What do they want; my
-08:-36:00 **24** computer, to see if I go to the internet; I download things.
-08:-36:00 **25** All this stuff Griffin talked about on direct that happened.

-08:-36:00 **1** And El-Hindi is clearly, under 8033 --

-08:-36:00 **2** MR. SOFER: I don't think that's a proper use of

-08:-36:00 **3** 8033.

-08:-36:00 **4** THE COURT: It's not hearsay; I agree with him on
-08:-36:00 **5** that.

-08:-36:00 **6** MR. SOFER: I understand why it is they want to do
-08:-36:00 **7** this. But if they want to put in testimony from somebody about

-08:-36:00 **8** whether or not they thought that things that they were doing

-08:-36:00 **9** were right or wrong, then again, I think there's only one person

-08:-36:00 **10** that can do this. You're putting in this little snippet as --

-08:-36:00 **11** THE COURT: How do you get this in under

-08:-36:00 **12** cross-examination?

-08:-36:00 **13** MR. HARTMAN: Well, Judge, first of all, it's

-08:-36:00 **14** because this is right before the indictment came down as Griffin

-08:-36:00 **15** is calling Amawi in Jordan and goes to visit Wassim the day

-08:-36:00 **16** before.

-08:-36:00 **17** THE COURT: You can certainly ask him, were you

-08:-36:00 **18** aware that the indictment was coming out? For what purpose were

-08:-36:00 **19** you contacting A, Amawi; you contacted Wassim; you contacted

-08:-36:00 **20** El-Hindi, all within a few -- however many days. What was your

-08:-36:00 **21** purpose in doing so? Had that been suggested to you by someone

-08:-36:00 **22** in the Bureau that you do so? Then depending upon his

-08:-36:00 **23** answers -- and did you inform El-Hindi about Mazloun being

-08:-36:00 **24** followed? I think you can ask: Do you recall what his

-08:-36:00 **25** reaction was?

-08:-36:00 **1** I don't know. It's getting further and further

-08:-36:00 **2** away from proper impeachment.

-08:-36:00 **3** MR. HARTMAN: Can we ask why he would ask these

-08:-36:00 **4** questions?

-08:-36:00 **5** THE COURT: If you want to ask a why question on

-08:-36:00 **6** cross-examination.

-08:-36:00 **7** MR. HARTMAN: Obviously we're not going to put it

-08:-36:00 **8** that way. He's smarter than I am.

-08:-36:00 **9** THE COURT: If you want to ask what his purpose

-08:-36:00 **10** was, fine. I think to the extent -- I think you have the

-08:-36:00 **11** apprehension that he may have somehow been doing this as one

-08:-36:00 **12** last rake through the pile to see what he could pull out.

-08:-36:00 **13** That's fine. If that's what's going on. And then go from

-08:-36:00 **14** there.

-08:-36:00 **15** MR. SOFER: Judge, that, I think, would be a proper

-08:-36:00 **16** avenue of cross-examination. But I'm confident that's not

-08:-36:00 **17** what's going on here. They want this in because it's

-08:-36:00 **18** testimony --

-08:-36:00 **19** THE COURT: But to read it in, uh-uh. Okay.

-08:-36:00 **20** (End of side-bar discussion.)

06:56:48 **21** THE COURT: Okay. Mr. Boss, you may continue.

-08:-36:00 **22** MR. BOSS: Thank you, Judge.

06:56:53 **23** BY MR. BOSS:

-08:-36:00 **24** Q. Mr. Griffin, what was your purpose for going and seeing

06:56:58 **25** apparently Wassim and Mr. El-Hindi so short before the

-08:-36:00 **1** indictment? Did you know the indictment was coming down?

-08:-36:00 **2** **A.** I did not, sir.

06:57:06 **3** **Q.** Did you have an understanding as to Mr. El-Hindi's

-08:-36:00 **4** concern or lack of concern regarding using his computer to

06:57:13 **5** download videos and look at internet sites?

06:57:16 **6** **A.** Could you repeat that? I'm sorry.

-08:-36:00 **7** **Q.** Did you have an understanding as to Mr. El-Hindi's

06:57:21 **8** concern or lack of concern as an American citizen downloading

06:57:26 **9** videos and looking at internet sites?

06:57:30 **10** **A.** What, if he thought it was wrong or right or something?

-08:-36:00 **11** **Q.** Yeah.

06:57:34 **12** **A.** I guess from this, he believes it's not -- it's okay.

06:57:41 **13** **Q.** Now, in the time that you were proposing to put together

06:57:49 **14** your cell, Marwan El-Hindi never suggested that he was going to

06:57:55 **15** put together a cell, did he?

06:58:01 **16** **A.** Just the fact -- I would have to say yes, sir.

06:58:08 **17** **Q.** You did suggest each, Marwan El-Hindi, Wassim, and Mr.

-08:-36:00 **18** Amawi, form -- each form their own cell; isn't that correct?

-08:-36:00 **19** **A.** I believe so.

-08:-36:00 **20** **Q.** And you have no knowledge of Marwan El-Hindi ever

-08:-36:00 **21** forming a cell, do you?

06:58:28 **22** **A.** Once again, do you want my opinion or --

-08:-36:00 **23** **MR. BOSS:** No, I don't think so. I really don't

-08:-36:00 **24** think so. But thank you for your time.

06:58:39 **25** Judge, subject to recalling Mr. Griffin on direct

06:58:44 **1** examination, we have completed our cross.

-08:-36:00 **2** THE COURT: Okay. And, ladies and gentlemen, I

-08:-36:00 **3** think we will adjourn for the day and resume Friday morning at

-08:-36:00 **4** 8:30. And as I've indicated, if at all possible, I'd like very

-08:-36:00 **5** much to complete Mr. Griffin's testimony; it may not be possible

-08:-36:00 **6** on Friday because it takes time to develop things. I'm not

-08:-36:00 **7** going to set a timetable. So we may go right up to 4:30 or

-08:-36:00 **8** shortly after that. The risk that we would go much later than

-08:-36:00 **9** that is nil because I have to catch a plane. And you can't

-08:-36:00 **10** stay here if I can't.

06:59:33 **11** Okay, folks. Have a pleasant day tomorrow. And

-08:-36:00 **12** drive carefully. Don't talk about the case, keep an open mind,

-08:-36:00 **13** and we'll see you Friday morning.

07:00:23 **14** (The jury exits the courtroom.)

-08:-36:00 **15** THE COURT: You may step down, Mr. Griffin.

-08:-36:00 **16** You may be seated. How are we doing with the

07:00:29 **17** definitions?

07:00:30 **18** MR. SOFER: The government and counsel, I think,

-08:-36:00 **19** have agreed to a large swath of them. We --

07:00:37 **20** THE COURT: A bigger swath than before?

07:00:40 **21** MR. SOFER: I think so. We now, as a result of

-08:-36:00 **22** our conversation on Monday and Monday evening, we've sent now an

07:00:51 **23** additional chunk of definition that related to groups, because

-08:-36:00 **24** counsel said originally -- Counsel for Amawi said they refused

-08:-36:00 **25** to stipulate to any of the groups. Therefore, we did not have

07:01:01 **1** to get clearance, for lack of a better word, to stipulate to

07:01:06 **2** those terms for purposes of this trial and this trial only. I

-08:-36:00 **3** have to say that after every time I say that, Judge, or they're

07:01:13 **4** going to fire me.

07:01:14 **5** THE COURT: Really?

-08:-36:00 **6** MR. SOFER: I'm sorry, Judge.

07:01:23 **7** I think, Counsel, as they stated earlier in the

-08:-36:00 **8** week, had a slight change of heart about this. So Mr.

07:01:29 **9** Teresinski has been working diligently to get that group -- I

07:01:33 **10** don't know if they've been sent to defense counsel.

07:01:36 **11** MR. WITMER-RICH: My understanding is we were going

-08:-36:00 **12** to try to sit down right now.

07:01:40 **13** MR. TERESINSKI: I suggested to counsel that

07:01:42 **14** whoever is responsible for each team sit down with me at the

07:01:46 **15** conclusion of today so we can go over what was given to them the

-08:-36:00 **16** other day, what was given to Your Honor. I was going to add

07:01:53 **17** groups as we receive them back from Washington, the definitions

-08:-36:00 **18** to counsel tonight to let them look at it as well.

-08:-36:00 **19** THE COURT: Good. If you want to use the

07:02:02 **20** conference room back here, you're welcome to do so.

-08:-36:00 **21** MR. SOFER: The government's position on this is

-08:-36:00 **22** as soon as they're available, we'd like the jury to have an

07:02:11 **23** opportunity to read them.

-08:-36:00 **24** Two other quick things, Judge. I just want to make

-08:-36:00 **25** sure it's clear under Your Honor's rules and under the rules of

07:02:19 **1** this circuit and in this district that we have the witness back,
-08:-36:00 **2** and we can discuss the case with him for redirect.
-08:-36:00 **3** There was one piece of evidence, Government's
07:02:29 **4** Exhibit 61A, which was admitted into evidence, I believe. I
07:02:32 **5** just wanted to make sure counsel for both Mohammad Amawi and
-08:-36:00 **6** Wassim Mazloun consented to that stipulation of permitting that
-08:-36:00 **7** piece of evidence.
07:02:43 **8** MR. WITMER-RICH: No objection.
07:02:45 **9** MR. DOUGHTEN: Just so we're clear --
-08:-36:00 **10** THE COURT: That was the translation --
07:02:50 **11** MR. DOUGHTEN: We have no problem, Your Honor.
07:02:52 **12** THE COURT: Anything else from the government?
07:02:57 **13** MR. SOFER: Nothing.
07:02:58 **14** MR. HARTMAN: No, Judge.
-08:-36:00 **15** MR. DOUGHTEN: No, Your Honor.
07:03:01 **16** THE COURT: Then I think all the exhibits that you
07:03:04 **17** alluded to are in evidence, right, during your cross?
07:03:08 **18** MR. BOSS: Judge, actually, we have a series of
07:03:11 **19** recordings that were alluded to that we played, some of which
07:03:15 **20** were part of the Government's Exhibits offered, some of which
-08:-36:00 **21** were not. We will need to separately present those. They are
-08:-36:00 **22** all exhibit EH1-various numbers. We also have the video of the
07:03:32 **23** ID -- or 1D-29, which we played today, which we've brought. It
07:03:41 **24** is identified now as Exhibit 4, EH4, and we do offer it into
-08:-36:00 **25** evidence.

07:03:47 **1** MR. SOFER: And, Judge, I would like a list from
-08:-36:00 **2** counsel just so we can parse this out. Some of the things that
-08:-36:00 **3** they used, and we started this -- the whole beginning of this
-08:-36:00 **4** they're not properly entered into evidence, others the
07:04:02 **5** government has put into evidence or agreed with counsel to put
-08:-36:00 **6** in. I have no way of sorting that out at this juncture. I'd
07:04:08 **7** ask them to supply a list. We'll go through it, and we'll be
-08:-36:00 **8** able to come back here on Friday and tell the Court --
07:04:14 **9** THE COURT: At some point. That's fine. So long
07:04:17 **10** as the clerk's office and the record know what's being talked
-08:-36:00 **11** about, take your time.
07:04:30 **12** MR. HARTMAN: Judge, one second.
-08:-36:00 **13** (Discussion had off the record.)
07:04:32 **14** MR. SOFER: And Counsel reminds me, EH4, that is
-08:-36:00 **15** the long video that we watched, was a Government's Exhibit or at
-08:-36:00 **16** least a government disk. We've stipulated that that should be
07:04:45 **17** entered into evidence in its entirety.
-08:-36:00 **18** THE COURT: Okay. I just want to make sure
07:04:49 **19** whatever you are dealing with made it from your table to mine,
-08:-36:00 **20** so to speak.
07:04:57 **21** MR. BOSS: I hope so.
-08:-36:00 **22** THE COURT: Okay. See you guys Friday morning.
07:05:04 **23** (Adjourned at 3:38 p.m.)
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C E R T I F I C A T E

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I certify that the foregoing is a correct transcript from the
record of proceedings in the above-entitled matter.

/s Tracy L. Spore _____

Tracy L. Spore, RMR, CRR Date

I N D E X

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4	DARREN GRIFFIN, CONTINUED CROSS-EXAMINATION3779
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